CHAPTER 63 State Information Commission

The Right to Information Act of 2005 provides for the creation of not only the Central Information Commission but also a State Information Commission at the state level. Accordingly, all the states have constituted the State Information Commissions.

The State Information Commission is a high-powered independent body which inter-alia looks into the complaints made to it and decide the appeals. It entertains complaints and appeals pertaining to offices, financial institutions, public sector undertakings, etc., under the concerned state government.

COMPOSITION

The Commission consists of a State Chief Information Commissioner and not more than ten State Information Commissioners[1]. They are appointed by the Governor on the recommendation of a committee consisting of the Chief Minister as Chairperson, the Leader of Opposition in the Legislative Assembly and a State Cabinet Minister nominated by the Chief Minister[2]. They should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. They should not be a Member of Parliament or Member of the Legislature of any State or Union Territory. They should not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

TENURE AND SERVICE CONDITIONS

The State Chief Information Commissioner and a State Information Commissioner shall hold office for such term as prescribed by the Central Government or until they attain the age of 65 years, whichever is earlier. They are not eligible for reappointment[3].

The Governor can remove the State Chief Information Commissioner or any State Information Commissioner from the office under the following circumstances:

(a) if he/she is adjudged an insolvent; or
(b) if he/she has been convicted of an offence which (in the opinion of the Governor) involves a moral turpitude; or
(c) if he/she engages during his/her term of office in any paid employment outside the duties of his/her office; or
(d) if he/she is (in the opinion of the Governor) unfit to continue in office due to infirmity of mind or body; or

[1]The number of State Information Commissioners varies from one state to another state.

[2]Where the Leader of Opposition in the Legislative Assembly has not been recognized as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of the Opposition.

[3]The State Information Commissioner is eligible for appointment as State Chief Information Commissioner but cannot hold office for more than a total of five years including his/her term as State Information Commissioner.

(e) if he/she has acquired such financial or other interest as is likely to affect prejudicially his/her official functions.

In addition to these, the Governor can also remove the State Chief Information Commissioner or any State Information Commissioner on the ground of proved misbehaviour or incapacity[4]. However, in these cases, the Governor has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, then the Governor can remove him.

The salary, allowances and other service conditions of the State Chief Information Commissioner and a State Information Commissioner shall be such as prescribed by the Central Government. But, they cannot be varied to his/her disadvantage during service.

POWERS AND FUNCTIONS

The powers and functions of the State Information Commission are:

1. It is the duty of the Commission to receive and inquire into a complaint from any person:
   (a) who has not been able to submit an information request because of non-appointment of a Public Information Officer;
   (b) who has been refused information that was requested;
   (c) who has not received response to his/her information request within the specified time limits;
   (d) who thinks the fees charged are unreasonable;
   (e) who thinks information given is incomplete, misleading or false; and
   (f) any other matter relating to obtaining information.
2. The Commission can order inquiry into any matter if there are reasonable grounds (suo-moto power).
3. While inquiring, the Commission has the powers of a civil court in respect of the following matters:
   (a) summoning and enforcing attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
   (b) requiring the discovery and inspection of documents;
   (c) receiving evidence on affidavit;
   (d) requisitioning any public record from any court or office;
   (e) issuing summons for examination of witnesses or documents; and
   (f) any other matter which may be prescribed.
4. During the inquiry of a complaint, the Commission may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds. In other words, all public records must be given to the Commission during inquiry for examination.
5. The Commission has the power to secure compliance of its decisions from the public authority. This includes:
   (a) providing access to information in a particular form;
   (b) directing the public authority to appoint a Public Information Officer where none exists;
   (c) publishing information or categories of information;
   (d) making necessary changes to the practices relating to management, maintenance and destruction of records;
   (e) enhancing training provision for officials on the right to information;
   (f) seeking an annual report from the public authority on compliance with this Act;

[4]He/she is deemed to be guilty of misbehaviour, if he/she is concerned or interested in any contract or agreement made by the State Government or participates in any way in the profit of such contract or agreement or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company.

(g) requiring the public authority to compensate for any loss or other detriment suffered by the applicant;
(h) imposing penalties under this Act[5]; and
(i) rejecting the application.

6. The Commission submits an annual report to the State Government on the implementation of the provisions of this Act. The State Government places this report before the State Legislature.
7. When a public authority does not conform to the provisions of this Act, the Commission may recommend (to the authority) steps which ought to be taken for promoting such conformity.

RTI AMENDMENT ACT, 2019

The various features or provisions of the Right to Information (Amendment) Act, 2019 are as follows:

1. It provided that the Chief Information Commissioner and an Information Commissioner shall hold office for such term as prescribed by the Central Government. Before this amendment, their term was fixed for 5 years.
2. It provided that the salary, allowances and other service conditions of the Chief Information Commissioner and an Information Commissioner shall be such as prescribed by the Central Government. Before this amendment, the salary, allowances and other service conditions of the Chief Information Commissioner were similar to those of the Chief Election Commissioner and that of an Information Commissioner were similar to those of an Election Commissioner.
3. It provided that the State Chief Information Commissioner and a State Information Commissioner shall hold office for such term as prescribed by the Central government. Before this amendment, their term was fixed for 5 years.
4. It provided that the salary, allowances and other service conditions of the State Chief Information Commissioner and a State Information Commissioner shall be such as prescribed by the Central Government. Before this amendment, the salary, allowances and other service conditions of the State Chief Information Commissioner were similar to those of an Election Commissioner and that of a State Information Commissioner were similar to those of the Chief Secretary of the state government.
5. It removed the provisions regarding deductions in salary of the Chief Information Commissioner, an Information Commissioner, the State Chief Information Commissioner and a State Information Commissioner due to pension or any other retirement benefits received by them for their previous government service.

[5]The Commission can impose a penalty on the Public Information Officer at the rate of ₹250 per day up to a maximum of ₹25,000. It can also recommend for disciplinary action against the errant official.

CHAPTER 64 Central Vigilance Commission

ESTABLISHMENT

The Central Vigilance Commission (CVC) is the main agency for preventing corruption in the Central government. It was established in 1964 by an executive resolution of the Central government. Its establishment was recommended by the Santhanam Committee on Prevention of Corruption[1] (1962–64).

Thus, originally the CVC was neither a constitutional body nor a statutory body. Later, it was conferred statutory status by the Central Vigilance Commission Act, 2003 (CVC Act, 2003).

The CVC has been designated as the agency to receive and act on complaints or disclosure on any allegation of corruption or misuse of office from whistle blowers under the "Public Interest Disclosure and Protection of Informers' Resolution" (PIDPI), 2004, which is popularly known as "Whistle Blowers" Resolution. The CVC is also empowered as the only designated agency to take action against complainants making motivated or vexatious complaints.[2]

The CVC is conceived to be the apex vigilance institution, free of control from any executive authority, monitoring all vigilance activity under the Central Government and advising various authorities in Central Government organisations in planning, executing, reviewing and reforming their vigilance work.

[1]The Committee on Prevention of Corruption with parliamentarian K. Santhanam as the Chairman, five other MPs and two senior officers as members, was appointed by the Government of India in 1962.

[2]Annual Report 2021, Central Vigilance Commission, p. 11.

COMPOSITION

The CVC is a multi-member body consisting of a Central Vigilance Commissioner (chairperson) and not more than two vigilance commissioners. They are appointed by the President by warrant under his/her hand and seal on the recommendation of a three-member committee consisting of the prime minister as its head, the Union minister of home affairs and the Leader of the Opposition[2a] in the Lok Sabha. They hold office for a term of four years or until they attain the age of sixty five years, whichever is earlier. After their tenure, they are not eligible for further employment under the Central or a state government.

The President can remove the Central Vigilance Commissioner or any vigilance commissioner from the office under the following circumstances:

(a) If he/she is adjudged an insolvent; or

(b) If he/she has been convicted of an offence which (in the opinion of the Central government) involves a moral turpitude; or

(c) If he/she engages, during his/her term of office, in any paid employment outside the duties of his/her office; or

(d) If he/she is (in the opinion of the President), unfit to continue in office by reason of infirmity of mind or body; or

(e) If he/she has acquired such financial or other interest as is likely to affect prejudicially his/her official functions.

[2a]Where the Leader of Opposition in the Lok Sabha has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Lok Sabha shall be deemed to be the Leader of the Opposition.

In addition to these, the President can also remove the Central Vigilance Commissioner or any vigilance commissioner on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, then the President can remove him/her. He/she is deemed to be guilty of misbehaviour, if he/she (a) is concerned or interested in any contract or agreement made by the Central government, or (b) participates in any way in the profit of such contract or agreement or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company.

The salary, allowances and other conditions of service of the Central Vigilance Commissioner are similar to those of the Chairman of UPSC and that of the vigilance commissioner are similar to those of a member of UPSC. But they cannot be varied to his/her disadvantage after his/her appointment.

ORGANISATION

The CVC has its own Secretariat, Chief Technical Examiners' Wing (CTE) and a wing of Commissioners for Departmental Inquiries (CDIs).

Secretariat: The Secretariat consists of a Secretary, Joint Secretaries, Deputy Secretaries, Under Secretaries and office staff.

Chief Technical Examiners' Wing: The Chief Technical Examiners' Organisation constitutes the technical wing of the CVC. It consists of Chief Engineers (designated as Chief Technical Examiners) and supporting engineering staff. The main functions assigned to this organisation are as follows:

(i) Technical audit of construction works of Government organisations from a vigilance angle

(ii) Investigation of specific cases of complaints relating to construction works

(iii) Extension of assistance to CBI in their investigations involving technical matters and for evaluation of properties in Delhi

(iv) Tendering of advice / assistance to the CVC and Chief Vigilance Officers[2b] in vigilance cases involving technical matters

Commissioners for Departmental Inquiries: The CDIs function as Inquiry Officers to conduct oral inquiries in departmental proceedings initiated against public servants.

FUNCTIONS

The functions of the CVC are:

1. To inquire or cause an inquiry or investigation to be conducted on a reference made by the Central government wherein it is alleged that a public servant being an employee of the Central government or its authorities[3], has committed an offence under the Prevention of Corruption Act, 1988.
2. To inquire or cause an inquiry or investigation to be conducted into any complaint against any official belonging to the below mentioned category of officials wherein it is alleged that he/she has committed an offence under the Prevention of Corruption Act, 1988:
   (a) Members of all-India services[4] serving in the Union and Group 'A' officers of the Central government; and
   (b) Specified level of officers of the authorities of the Central government.

[2b]The Chief Vigilance Officer is the head of the Vigilance Division of the Ministries/Departments/Organisations of the central government. He/she assists and advises the Secretary/Head in all vigilance matters.

[3]The authorities of the Central government include a corporation established by or under any Central act and government company, society and any local authority owned or controlled by the Central government.

[4]The All-India Services include Indian Administrative Service (IAS), Indian Police Service (IPS) and Indian Forest Service (IFoS).

3. To exercise superintendence over the functioning of the Delhi Special Police Establishment (CBI) insofar as it relates to the investigation of offences under the Prevention of Corruption Act, 1988.
4. To give directions to the Delhi Special Police Establishment (CBI) for superintendence insofar as it relates to the investigation of offences under the Prevention of Corruption Act, 1988.
5. To review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the prevention of Corruption Act, 1988.
6. To review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.
7. To tender advise to the Central government and its authorities on such matters as are referred to it by them.
8. To exercise superintendence over the vigilance administration in the ministries of the Central government or its authorities.
9. To undertake or cause an inquiry into complaints received under the Public Interest Disclosure and Protection of Informers' Resolution and recommend appropriate action.
10. The Central Government is required to consult the CVC in making rules and regulations governing the vigilance and disciplinary matters relating to the members of Central Services and All-India Services.

JURISDICTION

The jurisdiction of the CVC extends to the following:[5]

1. Members of All India Services serving in connection with the affairs of the Union and Group A officers of the Central Government.
2. Officers of the rank of Scale V and above in the Public Sector Banks.
3. Officers in Grade D and above in Reserve Bank of India, NABARD and SIDBI.
4. Chief Executives and Executives on the Board and other officers of E-8 and above in Schedule 'A' and 'B' Public Sector Undertakings.
5. Chief Executives and Executives on the Board and other officers of E-7 and above in Schedule 'C' and 'D' Public Sector Undertakings.
6. Managers and above in General Insurance Companies.
7. Senior Divisional Managers and above in Life Insurance Corporation.
8. Officers drawing salary of ₹8700/- per month (pre-revised) and above on Central Government D.A. pattern, as may be revised from time to time, in societies and local authorities owned or controlled by the Central Government.

WORKING

The CVC conducts its proceedings at its headquarters (New Delhi). It is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the Central government or its authorities so as to enable it to exercise general supervision over the vigilance and anti-corruption work in them.

The CVC, on receipt of the report of the inquiry undertaken by any agency on a reference made by it, advises the Central government or its authorities as to the further course of action. The Central government or its authorities shall consider the advice of the CVC and take appropriate action. However, where the Central government or any of its authorities do not agree with the advice of the CVC, it shall communicate the reasons (to be recorded in writing) to the CVC.

The CVC has to present annually to the President a report on its performance. The President places this report before each House of Parliament.

[5]Annual Report 2021, Central Vigilance Commission, pp. 10–11.

WHISTLE BLOWERS PROTECTION ACT (2014)

The salient features of the Whistle Blowers Protection Act (2014)[6] are as follows[7]:

1. The Act provides a mechanism for protecting the identity of whistle blowers (a term given to people who expose corruption). People who expose corruption in Government or irregularities by public functionaries can now be free of any fear of victimization.
2. The Act also provides for a system to encourage people to disclose information about corruption or the wilful misuse of power by public servants, including ministers.
3. As per the Act, a person can make a public interest disclosure on corruption before a competent authority – which is at present the Central Vigilance Commission (CVC). The government, by notification, can appoint any other body also for receiving such complaints about corruption.
4. The Act, however, lays down punishment of up to two years in prison and a fine of up to ₹30,000 for false or frivolous complaints.
5. The Act says that every disclosure shall be made in good faith and the person making the disclosure shall provide a personal declaration stating that he/she reasonably believes that the information disclosed by him/her and the allegation contained therein is substantially true.
6. Disclosures can be made in writing or by email message in accordance with the procedure as may be prescribed and contain full particulars and be accompanied by supporting documents, or other material.
7. However, no action shall be taken on a disclosure if it does not indicate the identity of the complainant or public servant or if "the identity of the complainant or public servant is found to be incorrect."
8. The Act is not applicable to the Special Protection Group.

[6]Originally, the year of the Act was 2011. Later, it was changed to 2014.

[7]*The Indian Express*, "Whistleblowers Protection Act gets President's nod", May 13, 2014.

CHAPTER 65 Central Bureau of Investigation

ESTABLISHMENT

The Central Bureau of Investigation (CBI) traces its origin to the Special Police Establishment which was set up in 1941 by the Government of India. The functions of the Special Police Establishment then were to investigate cases of bribery and corruption in transactions with the War and Supply Department of India during World War II. The superintendence of the Special Police Establishment was vested with this War and Supply Department. Even after the end of the War, the need for a Central Government agency to investigate cases of bribery and corruption by Central Government employees was felt. Therefore, the Delhi Special Police Establishment Act was brought into force in 1946. This Act transferred the superintendence of the Special Police Establishment to the Home Department and its functions were enlarged to cover all departments of the Government of India.[1]

The CBI was established in 1963 by a resolution of the Ministry of Home Affairs, Government of India. The Delhi Special Police Establishment was also merged with the CBI and was made one of the divisions of the CBI. Later, the CBI was transferred to the Ministry of Personnel[1a].

The CBI is not a statutory body. It derives its powers from the Delhi Special Police Establishment Act, 1946.

The CBI is the main investigating agency of the Central Government. It plays an important role in the prevention of corruption and maintaining integrity in administration. It also provides assistance to the Central Vigilance Commission and Lokpal.

There is a difference between the nature of cases investigated by the National Investigation Agency (NIA) and the CBI. The NIA has been constituted after the Mumbai terror attack in 2008 mainly for investigation of incidents of terrorist attacks, funding of terrorism and other terror related crime, whereas the CBI investigates crime of corruption, economic offences and serious and organized crime other than terrorism.

It must be noted here that the provisions of the Delhi Special Police Establishment Act (1946) does not enable the CBI to exercise its powers and jurisdiction in any area in a State (not being a railway area) without the consent of the Government of that State. In other words, the jurisdiction of the CBI can be extended to the States only with the consent of the State Government concerned.

MOTTO, MISSION AND VISION

The motto, mission and vision of the CBI are as follows[2]:

Motto: Industry, Impartiality and Integrity

[1]This information is obtained from the official website of the Central Bureau of Investigation, Government of India.

[1a]The CBI functions under the administrative control of the Department of Personnel and Training (DoPT) of the Ministry of Personnel.

[2]This information is obtained from the official website of the Central Bureau of Investigation, Government of India.

Mission: To uphold the Constitution of India and law of the land through in-depth investigation and successful prosecution of offences; to provide leadership and direction to police forces and to act as the nodal agency for enhancing inter-state and international cooperation in law enforcement

Vision: *Based on its motto, mission and the need to develop professionalism, transparency, adaptability to change and use of science and technology in its working, the CBI will focus on*

1. Combating corruption in public life, curbing economic and violent crimes through meticulous investigation and prosecution
2. Evolving effective systems and procedures for successful investigation and prosecution of cases in various law courts
3. Helping fight cyber and high technology crime
4. Creating a healthy work environment that encourages team-building, free communication and mutual trust
5. Supporting state police organisations and law enforcement agencies in national and international cooperation, particularly relating to enquiries and investigation of cases
6. Playing a lead role in the war against national and transnational organised crime
7. Upholding human rights, protecting the environment, arts, antiques and heritage of our civilisation
8. Developing a scientific temper, humanism and the spirit of inquiry and reform
9. Striving for excellence and professionalism in all spheres of functioning so that the organisation rises to high levels of endeavor and achievement.

COMPOSITION

The CBI is headed by a Director. He/she is assisted by special director(s) and additional director(s). Additionally, it has a number of joint directors, deputy inspector-generals, superintendents of police and all other usual ranks of police personnel as well as forensic scientists and law officers.

The Director of CBI as Inspector-General of Police, Delhi Special Police Establishment, is responsible for the administration of the organisation. With the enactment of CVC Act, 2003, the superintendence of Delhi Special Police Establishment vests with the Central Government save investigations of offences under the Prevention of Corruption Act, 1988, in which, the superintendence vests with the Central Vigilance Commission.

The Lokpal and Lokayuktas Act (2013) amended the Delhi Special Police Establishment Act (1946) and made the following changes with respect to the composition of the CBI:

1. The Central Government shall appoint the Director of CBI on the recommendation of a three-member committee consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha and the Chief Justice of India or Judge of the Supreme Court nominated by him/her.
2. There shall be a Directorate of prosecution headed by a Director for conducting the prosecution of cases under the Lokpal and Lokayuktas Act, 2013. The Director of Prosecution shall function under the overall supervision and control of the Director of CBI. He/she shall be appointed by the Central Government on the recommendation of the Central Vigilance Commission.
3. The Central Government shall appoint officers of the rank of SP and above in the CBI on the recommendation of a committee consisting of the Central Vigilance Commissioner as Chairperson, the Vigilance Commissioners, the Secretary of the Home Ministry and the Secretary of the Department of Personnel.

Later, the Delhi Special Police Establishment (Amendment) Act, 2014 made a change in the composition of the committee related to the appointment of the Director of CBI. It states that where there is no recognized

Leader of Opposition in the Lok Sabha, then the leader of the single largest opposition party in the Lok Sabha would be a member of that committee.

Again, the Delhi Special Police Establishment (Amendment) Act, 2021 provides for the extension of the tenure of the Director of CBI. Under the CVC Act, 2003, he/she has a fixed two-year tenure. But, the amendment allowed the central government to extend his/her tenure from two years to up to five years. However, the extension can be given up to one year at a time and no such extension is possible after the completion of a period of five years in total, including the two-year period of initial appointment. This means that he/she can be given three annual extensions. Further, such extensions may be granted in public interest, on the recommendation of the Committee related to the initial appointment and for the reasons to be recorded in writing.

FUNCTIONS

The functions of CBI are[3]:

(i) Investigating cases of corruption, bribery and misconduct of Central government employees.

(ii) Investigating cases relating to infringement of fiscal and economic laws, that is, breach of laws concerning export and import control, customs and central excise, income tax, foreign exchange regulations and so on. However, such cases are taken up either in consultation with or at the request of the department concerned.

(iii) Investigating serious crimes, having national and international ramifications, committed by organised gangs of professional criminals.

(iv) Coordinating the activities of the anti-corruption agencies and the various state police forces

(v) Taking up, on the request of a state government, any case of public importance for investigation.

(vi) Maintaining crime statistics and disseminating criminal information.

The CBI is a multidisciplinary investigation agency of the Government of India and undertakes investigation of corruption-related cases, economic offences and cases of conventional crime. It normally confines its activities in the anti-corruption field to offences committed by the employees of the Central Government and Union Territories and their public sector undertakings. It takes up investigation of conventional crimes like murder, kidnapping, rape etc., on reference from the state governments or when directed by the Supreme Court/ High Courts.

The CBI acts as the "National Central Bureau" of Interpol in India. The Interpol Wing of the CBI coordinates requests for investigation-related activities originating from Indian law enforcement agencies and the member countries of the Interpol.

PROVISION OF PRIOR PERMISSION

The CBI is required to obtain the prior approval of the Central Government before conducting any inquiry or investigation into an offence committed by officers of the rank of joint secretary and above in the Central Government and its authorities.

However, in 2014, the Supreme Court held as invalid the legal provision that makes prior sanction mandatory for the CBI to conduct a probe against senior bureaucrats in corruption cases under the Prevention of Corruption Act.[4]

A Constitution Bench held that Section 6A of the Delhi Special Police Establishment Act, which granted protection to joint secretary and above officers from facing even a preliminary inquiry by the CBI in corruption cases, was violative of Article 14.

Writing the judgment, the CJI said, "Corruption is an enemy of [the] nation and tracking down a corrupt public servant, howsoever high

[3] *Ibid.*

[4] *The Hindu*, "No sanction needed for CBI to probe bureaucrats: SC," May 7, 2014.

he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of a public servant does not qualify the person from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crime doers and have to be tracked down by the same process of inquiry and investigation."

CBI VS. STATE POLICE

The role of the Delhi Special Police Establishment (a division of CBI) is supplementary to that of the state police forces. Along with state police forces, the Delhi Special Police Establishment (DSPE) enjoys the concurrent powers of investigation and prosecution for offences under the Delhi Special Police Establishment Act, 1946. However, to avoid duplication and overlapping of cases between these two agencies, the following administrative arrangements have been made:

(i) The DSPE shall take up such cases which are essentially and substantially concerned with the Central Government's affairs or employees, even if they also involve certain state government employees.

(ii) The state police force shall take up such cases which are substantially concerned with the state government's affairs or employees, even if they also involve certain Central Government employees.

(iii) The DSPE shall also take up cases against employees of public undertakings or statutory bodies established and financed by the Central Government.

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CHAPTER 66 Lokpal and Lokayuktas

GLOBAL SCENARIO

Modern democratic states are characterised by a welfare orientation. Hence, the government has come to play an important role in the socio-economic development of a nation. This has resulted in the expansion of bureaucracy and the multiplication of administrative process, which in turn increased the administrative power and discretion enjoyed by the civil servants at different levels of the government. The abuse of this power and discretion by civil servants opens up scope for harassment, malpractices, maladministration and corruption. Such a situation gives rise to citizens' grievances against administration[1].

The success of democracy and the realisation of socio-economic development depends on the extent to which the citizens' grievances are redressed. Therefore, the following institutional devices have been created in different parts of the world to deal with the redressal of these grievances:

1. The Ombudsman System
2. The Administrative Courts System
3. The Procurator System

The earliest democratic institution created in the world for the redressal of citizens' grievance is the Scandinavian institution of Ombudsman. Donald C. Rowat, an international expert on the institution of Ombudsman, calls it a "uniquely appropriate institution for dealing with the average citizens' complaints about unfair administrative actions."

The institution of Ombudsman was first created in Sweden in 1809. 'Ombud' is a Swedish term and refers to a person who acts as the representative or spokesman of another person. According to Donald C. Rowat, Ombudsman refers to "an officer appointed by the legislature to handle complaints against administrative and judicial action."

The Swedish Ombudsman deals with the citizens' grievances in the following matters:

(i) Abuse of administrative discretion, that is, misuse of official power and authority
(ii) Maladministration, that is, inefficiency in achieving the targets
(iii) Administrative corruption, that is, demanding bribery for doing things
(iv) Nepotism, that is, supporting one's own kith and kin in matters like providing employment
(v) Discourtesy, that is, misbehaviour of various kinds, for instance, use of abusive language.

The Ombudsman is a constitutional authority and enjoys the powers to supervise the compliance of laws and regulations by the public officials, and see that they discharge their duties properly. In other words, The authority keeps a watch over all public officials—civil, judicial and military—so that they function impartially, objectively and legally, that is, in accordance with the law. However, the authority has no power to reverse or quash a decision and has no direct control over administration or the courts.

[1]According to the Chambers Dictionary, grievance means 'a ground of complaint; a condition felt to be oppressive or wrongful'.

The Ombudsman can act either on the basis of a complaint received from the citizen against unfair administrative action or *suo moto* (i.e. on his/her own initiative). The authority can prosecute any erring official including the judges. However, it cannot inflict any punishment. It only reports the matter to the higher authorities for taking the necessary corrective action.

From Sweden, the institution of Ombudsman spread to other Scandinavian countries—Finland (1919), Denmark (1955) and Norway (1962). New Zealand is the first Commonwealth country in the world to have adopted the Ombudsman system in the form of a Parliamentary Commissioner for Investigation in 1962. The United Kingdom adopted Ombudsman-like institution called Parliamentary Commissioner for Administration in 1967. Since then, many other counties of the world have adopted Ombudsman-like institutions with different nomenclature and functions. The Ombudsman in India is called Lokpal/Lokayukta.

Donald. C. Rowat says that the institution of Ombudsman is a "bulkwork of democratic government against the tyranny of officialdom." While Gerald E. Caiden, a scholar of Public Administration, described the Ombudsman as "institutionalised public conscience."

Another unique institutional device created for the redressal of citizens' grievances against administrative authorities, is the French system of Administrative Courts. Due to its success in France, the system has gradually spread to various other countries of the world.

The socialist countries like the former USSR (now Russia) and China have created their own institutional device for the redressal of citizens' grievances. It is called 'Procurator System' in these countries.

POSITION IN INDIA

The existing legal and institutional framework to check corruption and redress citizens' grievances in India consists of the following:

- Public Servants (Enquiries) Act, 1850
- Indian Penal Code, 1860
- Special Police Establishment, 1941
- Delhi Special Police Establishment Act, 1946
- Prevention of Corruption Act, 1988
- *Benami* Transactions (Prohibition) Act, 1988
- Commissions of Inquiry Act, 1952 (against political leaders and eminent public men)
- All-India Services (Conduct) Rules, 1968
- All-India Services (Discipline and Appeal) Rules, 1969
- Central Civil Services (Conduct) Rules, 1964
- Central Civil Services (Classification, Control and Appeal) Rules, 1965
- Railway Services (Conduct) Rules, 1966
- Vigilance organisations in ministries/departments, attached and subordinate offices and public undertakings
- Central Bureau of Investigation, 1963
- Central Vigilance Commission, 1964
- State Vigilance Commissions, 1964
- Anti-corruption bureaus in states
- Lokpal (Ombudsman) at the Centre
- Lokayukta (Ombudsman) in states
- Divisional Vigilance Board
- District Vigilance Officer
- National, State and District Consumer Disputes Redressal Commissions
- National Commission for SCs
- National Commission for STs
- National Commission for BCs
- National Commission for Minorities
- Supreme Court and High Courts in states
- Administrative Tribunals (*quasi*-judicial bodies)
- Directorate of Public Grievances in the Cabinet Secretariat, 1988
- Parliament and its committees
- 'File to Field' programme in some states like Kerala. In this innovative scheme, the administrator goes to the village/area and hears public grievances and takes immediate action wherever possible.
- Whistle Blowers Protection Act, 2014
- Department of Administrative Reforms and Public Grievances
- Centralised Public Grievance Redress and Monitoring System, 2007

LOKPAL

The First Administrative Reforms Commission (ARC) of India (1966–1970) recommended the setting up of two special authorities designated as 'Lokpal' and 'lokayukta' for the redressal of citizens' grievances[2]. These institutions were to be set up on the pattern of the institution of Ombudsman in Scandinavian countries and the parliamentary commissioner for investigation in New Zealand. The Lokpal would deal with complaints against ministers and secretaries at Central and state levels, and the lokayukta (one at the Centre and one in every state) would deal with complaints against other specified higher officials. The ARC kept the judiciary outside the purview of Lokpal and lokayukta as in New Zealand. But, in Sweden the judiciary is within the purview of Ombudsman.

According to the ARC, the Lokpal would be appointed by the President after consultation with the chief justice of India, the Speaker of Lok Sabha and the Chairman of the Rajya Sabha.

The ARC also recommended that the institutions of Lokpal and lokayukta should have the following features:

1. They should be demonstratively independent and impartial.
2. Their investigations and proceedings should be conducted in private and should be informal in character.
3. Their appointment should be, as far as possible, non-political.
4. Their status should compare with the highest judicial functionaries in the country.
5. They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.
6. Their proceedings should not be subject to judicial interference.
7. They should have the maximum latitude and powers in obtaining information relevant to their duties.
8. They should not look forward to any benefit or pecuniary advantage from the executive government.

The Government of India accepted the recommendations of ARC in this regard. So far, ten official attempts have been made to bring about legislation on this subject. Bills were introduced in the Parliament in the following years:

1. In May 1968, by the Congress Government headed by Indira Gandhi.
2. In April 1971, again by the Congress Government headed by Indira Gandhi.
3. In July 1977, by the Janata Government headed by Morarji Desai.
4. In August 1985, by the Congress Government headed by Rajiv Gandhi.
5. In December 1989, by the National Front Government headed by V.P. Singh.
6. In September 1996, by the United Front Government headed by Deve Gowda.
7. In August 1998, by the BJP-led coalition Government headed by A.B. Vajpayee.
8. In August 2001, by the NDA government headed by A.B. Vajpayee.
9. In August 2011, by the UPA government headed by Manmohan Singh.
10. In December 2011, by the UPA government headed by Manmohan Singh.

The first four bills lapsed due to the dissolution of Lok Sabha, while the fifth one was withdrawn by the government. The sixth and seventh bills also lapsed due to the dissolution of the 11th and 12th Lok Sabha. Again, the eighth bill (2001) lapsed due to the dissolution of the 13th Lok Sabha in 2004. The ninth bill (2011) was withdrawn by the government. The tenth bill (the Lokpal and Lokayuktas Bill, 2011) was enacted as the Lokpal and Lokayuktas Act, 2013.

LOKPAL AND LOKAYUKTAS ACT (2013)

Features

The salient features of the Lokpal and Lokayuktas Act (2013) are as follows.[3]

[2]The First ARC of India headed by Morarji Desai submitted a special interim report on the 'Problems of Redressal of Citizens' Grievances' in 1966.

[3]Press Information Bureau, Government of India, December 23, 2013.

1. It seeks to establish the institution of the Lokpal at the Centre and the Lokayukta at the level of the State and thus seeks to provide a uniform vigilance and anti-corruption road map for the nation both at the Centre and at the States. The jurisdiction of Lokpal includes the Prime Minister, Ministers, Members of Parliament and Groups A, B, C and D officers and officials of the Central Government.
2. The Lokpal to consist of a Chairperson with a maximum of 8 members of which 50% shall be judicial members.
3. 50% of the members of the Lokpal shall come from amongst the SCs, the STs, the OBCs, minorities and women.
4. The selection of the Chairperson and the members of Lokpal shall be through a Selection Committee consisting of the Prime Minister, the Speaker of the Lok Sabha, the Leader of the Opposition in the Lok Sabha, the Chief Justice of India or a sitting Supreme Court Judge nominated by the Chief Justice of India and an eminent jurist to be nominated by the President of India on the basis of recommendations of the first four members of the selection committee.
5. A Search Committee will assist the Selection Committee in the process of selection. 50% of the members of the Search Committee shall also be from amongst the SCs, the STs, the OBCs, minorities and women.
6. The Prime Minister has been brought under the purview of the Lokpal with subject matter exclusions and specific process for handling complaints against the Prime Minister.
7. Lokpal's jurisdiction will cover all categories of public servants, including Group A, Group B, Group C, and Group D officers and employees of Government. On complaints referred to the CVC by the Lokpal, the CVC will send its report of preliminary enquiry in respect of Group A and Group B Officers back to the Lokpal for further decision. With respect to categories of employees from Group C and Group D, the CVC will proceed further in exercise of its own powers under the CVC Act subject to reporting and review by the Lokpal.
8. The Lokpal will have the power of superintendence and direction over any investigating agency, including the CBI, for cases referred to them by the Lokpal.
9. A High-Powered Committee chaired by the Prime Minister will recommend the selection of the Director of CBI.
10. It incorporates provisions for attachment and confiscation of property of public servants acquired by corrupt means, even while the prosecution is pending.
11. It lays down clear timelines. For preliminary enquiry, it is three months extendable by three months. For investigation, it is six months which may be extended by six months at a time. For trial, it is one year extendable by one year and to achieve this, special courts to be set up.
12. It enhances maximum punishment under the Prevention of Corruption Act from seven years to ten years. The minimum punishment under sections 7, 8, 9 and 12 of the Prevention of Corruption Act will now be three years, and the minimum punishment under section 15 (punishment for attempt) will now be two years.
13. Institutions which are financed fully or partly by Government are under the jurisdiction of Lokpal, but institutions aided by Government are excluded.
14. It provides adequate protection for honest and upright public servants.
15. Lokpal conferred with power to grant sanction for prosecution of public servants in place of the Government or competent authority.
16. It contains a number of provisions aimed at strengthening the CBI such as:
    (i) setting up of a Directorate of Prosecution headed by a Director of Prosecution under the overall control of the Director of CBI;

(ii) appointment of the Director of Prosecution on the recommendation of the CVC;

(iii) maintenance of a panel of advocates by CBI other than Government advocates with the consent of the Lokpal for handling Lokpal-referred cases;

(iv) transfer of officers of CBI investigating cases referred by Lokpal with the approval of Lokpal;

(v) provision of adequate funds to CBI for investigating cases referred by Lokpal.

17. All entities receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of ₹10 lakhs per year are brought under the jurisdiction of Lokpal.
18. It contains a mandate for setting up of the institution of Lokayukta through enactment of a law by the State Legislature within a period of 365 days from the date of commencement of this Act. Thus, the Act provides freedom to the states to decide upon the contours of the Lokayukta mechanism in their respective states.

Drawbacks

The following are the drawbacks (shortcomings) of the Lokpal and Lokayuktas Act, 2013[4]:

1. Lokpal cannot suo motu proceed against any public servant.
2. Emphasis on form of complaint rather than substance.
3. Heavy punishment for false and frivolous complaints against public servants may deter complaints being filed to Lokpal.
4. Anonymous complaints not allowed – Can't just make a complaint on plain paper and drop it in a box with supporting documents.
5. Legal assistance to public servant against whom complaint is filed.
6. Limitation period of 7 years to file complaints.
7. Very non-transparent procedure for dealing with complaints against the PM.

LOKAYUKTAS

Even much before the enactment of the Lokpal and Lokayuktas Act (2013) itself, many states had already set up the institution of Lokayuktas.

It must be noted here that the institution of lokayukta was established first in Maharashtra in 1971. However, Odisha had passed the Act in this regard in 1970.

The various aspects of the institution of lokayukta are:

1. The structure of the lokayukta is not same in all the states. Some states have created the lokayukta as well as upalokayukta, while some others have created only the lokayukta.
2. The lokayukta and upalokayukta are appointed by the governor of the state.
3. Judicial qualifications are prescribed for the lokayukta in some states. But no specific qualifications are prescribed in other states.
4. In most of the states, the term of office fixed for lokayukta is of 5 years duration or 65 years of age, whichever is earlier.
5. There is no uniformity regarding the jurisdiction of lokayukta in all the states. The following points can be noted in this regard:
   (a) The chief minister is included within the jurisdiction of lokayukta in some states, while he/she is excluded from the purview of lokayukta in other states.
   (b) Ministers and higher civil servants are included in the purview of lokayukta in almost all the states.
   (c) Members of state legislatures are included in the purview of lokayukta in some states.
   (d) The authorities of the local bodies, corporations, companies and societies

[4]Taxmann's Guide to Lokpal and Lokayuktas Act 2013, pp. I–9 to I–11.

are included in the jurisdiction of the lokayukta in most of the states.

6. In most of the states, the lokayukta can initiate investigations either on the basis of a complaint received from the citizen against unfair administrative action or *suo moto*.
7. The lokayukta can consider the cases of 'grievances' as well as 'allegations' in some states. But, in other states, the job of lokayuktas is confined to investigating allegations (corruption) and not grievances (maladministration).
8. The lokayukta presents, annually, to the governor of the state a consolidated report on his/her performance. The governor places this report along with an explanatory memorandum before the state legislature.
9. The recommendations made by the lokayukta are only advisory and not binding on the state government.

CHAPTER 67 National Investigation Agency

ESTABLISHMENT

The National Investigation Agency (NIA) was constituted in 2009 under the provisions of the National Investigation Agency Act, 2008 (NIA Act). It is the central counter-terrorism law enforcement agency in the country.

The NIA was established in the backdrop of the 2008 Mumbai terror attacks, popularly known as the 26/11 incident. This national horror led to the realisation of the need for a separate federal agency to deal with terror-related crimes in the country.

The headquarters of the NIA is in New Delhi. The branch offices of the NIA are located in different states of India. In addition, the NIA has a separate specialised cell known as TFFC Cell dealing with the subjects of fake currency notes and terror funding.

The NIA is headed by a Director-General. He/she is appointed by the central government. His/her powers are similar to the powers exercisable by a Director-General of Police in respect of the police force in a state.

The NIA works under the administrative control of the Ministry of Home Affairs, Government of India. The state government extends all assistance and co-operation to the NIA for investigation of the offences specified under the NIA Act.

RATIONALE

While introducing the NIA Bill, 2008, in the Parliament, the Government of India gave the following reasons for creating the NIA:

1. Over the past several years, India has been the victim of large-scale terrorism sponsored from across the borders. There have been innumerable incidents of terrorist attacks, not only in the militancy and insurgency affected areas and areas affected by left-wing extremism, but also in the form of terrorist attacks and bomb blasts, etc., in various parts of the hinterland and major cities, etc.
2. A large number of such incidents are found to have complex inter-state and international linkages, and possible connection with other activities like the smuggling of arms and drugs, pushing in and circulation of fake Indian currency, infiltration from across the borders, etc.
3. Keeping all these in view, it was felt that there was a need for setting up of an agency at the central level for the investigation of offences related to terrorism and certain other Acts, which have national ramifications.
4. Several expert committees and the Second Administrative Reforms Commission of India[1] have also made recommendations for establishing such an agency.

FUNCTIONS

The NIA is mandated to investigate and prosecute offences under the various Acts mentioned in the Schedule of the NIA Act. In pursuance of its mandate, the NIA collects, collates and analyses counter-terrorism investigation. It also shares inputs with its sister intelligence

[1]The Second Administrative Reforms Commission of India (Chairman: Veerappa Moily), 2005–09, in its report entitled 'Combating Terrorism' (2008).

agencies and law enforcement units both at central and state governments level.

In more detail, the functions assigned to the NIA are as follows[2]:

(a) To investigate and prosecute offences in respect of the Acts specified in the Schedule of the NIA Act.

(b) To provide assistance to, and seek assistance from, other intelligence and investigation agencies of the central government and state governments.

(c) To take other such measures which may be necessary for speedy and effective implementation of the provisions of the NIA Act.

VISION

The following points highlight the vision of the NIA[3]:

1. The NIA aims to be a thoroughly professional investigative agency matching the best international standards.
2. The NIA aims to set the standards of excellence in counter-terrorism and other national security-related investigations at the national level by developing into a highly trained, partnership-oriented workforce.
3. The NIA aims at creating deterrence for existing and potential terrorist groups/individuals.
4. The NIA aims to develop as a storehouse of all terrorist-related information.

MISSION

The mission of the NIA is as follows[4]:

1. In-depth professional investigation of scheduled offences using the latest scientific methods of investigation and setting up such standards as to ensure that all cases entrusted to the NIA are detected.
2. Ensuring effective and speedy trial.
3. Developing into a thoroughly professional, result-oriented organisation, upholding the Constitution of India and laws of the land, giving prime importance to the protection of human rights and dignity of the individual.
4. Developing a professional workforce through regular training and exposure to the best practices and procedures.
5. Displaying scientific temper and progressive spirit while discharging the duties assigned.
6. Inducting modern methods and the latest technology in every sphere of activities of the agency.
7. Maintaining professional and cordial relations with the governments of states and union territories and other law enforcement agencies in compliance with the legal provisions of the NIA Act.
8. Assisting all states and other investigating agencies in investigation of terrorist cases.
9. Building a database on all terrorist-related information and sharing the available database with the states and other agencies.
10. Studying and analysing laws relating to terrorism in other countries and regularly evaluating the adequacy of existing laws in India and proposing changes as and when necessary.
11. Winning the confidence of the citizens of India through selfless and fearless endeavours.

JURISDICTION

The NIA has concurrent jurisdiction to investigate and prosecute the offences affecting the sovereignty, security and integrity of India, security of state, friendly relations with foreign states and offences under various Acts enacted to implement international treaties, agreements, conventions and resolutions of the UNO, its agencies and other international organisations.

[2]The National Investigation Agency (Manner of Constitution) Rules, 2008.

[3]This information is obtained from the official website of the National Investigation Agency, Government of India.

[4]*Ibid.*

The NIA is empowered to probe terror attacks including bomb blasts, hijacking of aircrafts and ships, attacks on nuclear installations and use of weapons of mass destruction.

In 2019, the jurisdiction of the NIA was extended[5]. Consequently, the NIA is also empowered to probe the offences relating to human trafficking, counterfeit currency or bank notes, manufacture or sale of prohibited arms, cyber-terrorism and explosive substances.

NIA (AMENDMENT) ACT, 2019

The various features or provisions of the amendment are as follows[6]:

1. It applied the provisions of the NIA Act also to persons who commit a scheduled offence beyond India against Indian citizens or affecting the interest of India.
2. It provided that the officers of the NIA shall have the similar powers, duties, privies and liabilities being exercised by the police officers in connection with the investigation of offences, not only in India but also outside India.
3. It empowered the central government, with respect to a scheduled offence committed outside India, to direct the NIA to register the case and take up investigation as if such offence has taken place in India.
4. It provided that the central government and the state governments may designate Sessions Courts as Special Courts for conducting the trial of offences under the NIA Act.
5. It inserted certain new offences in the Schedule of the NIA Act.

[5]Vide the NIA (Amendment) Act, 2019.

[6]Based on the Statement of Objects and Reasons appended to the NIA (Amendment) Bill, 2019.

Scan the QR Code to access the conceptual video on *Discussion of CAG, AGI, CBI and NIA – their autonomy and limitations* and other important topics on EDGE

CHAPTER 68 National Disaster Management Authority

ESTABLISHMENT

The Government of India, recognising the importance of disaster management as a national priority, had set up a High Powered Committee in 1999 and a National Committee in 2001 after the Gujarat earthquake, to make recommendations on the preparation of disaster management plans and suggest effective mitigation mechanisms. However, after the Indian Ocean tsunami of 2004, the Government of India took a defining step in the legislative history of the country by enacting the Disaster Management Act, 2005[1].

The Act provided for the creation of the National Disaster Management Authority (NDMA) to spearhead and implement a holistic and integrated approach to disaster management in the country. Initially, the NDMA was constituted in 2005 by an Executive Order of the Government of India. Subsequently, the NDMA was notified in 2006 under the provisions of the Act[2].

The NDMA consists of a chairperson and other members, not exceeding nine. The Prime Minister is the ex-officio chairperson of the NDMA. The other members are nominated by the chairperson of the NDMA. The chairperson of the NDMA designates one of the members as the vice-chairperson of the NDMA. The vice-chairperson has the status of a Cabinet Minister while the other members have the status of a Minister of State.

[1]Annual Report 2020–21, National Disaster Management Authority, Government of India, p. 2.
[2]*Ibid.*

The NDMA is the apex body for disaster management in the country. It works under the administrative control of the Union Ministry of Home Affairs.

The NDMA was established with this vision: 'To build a safer and disaster resilient India by a holistic, pro-active, technology driven and sustainable development strategy that involves all stakeholders and fosters a culture of prevention, preparedness and mitigation'.

OBJECTIVES

The objectives of the NDMA are as follows[3]:

1. To promote a culture of prevention, preparedness and resilience at all levels through knowledge, innovation and education.
2. To encourage mitigation measures based on technology, traditional wisdom and environmental sustainability.
3. To mainstream disaster management into the developmental planning process.
4. To establish institutional and techno-legal frameworks to create an enabling regulatory environment and a compliance regime.
5. To ensure an efficient mechanism for identification, assessment and monitoring of disaster risks.
6. To develop contemporary forecasting and early warning systems backed by responsive and failsafe communication with information technology support.

[3]*Ibid,* p. 6.

7. To ensure efficient response and relief with a caring approach towards the needs of the vulnerable sections of the society.
8. To undertake reconstruction as an opportunity to build disaster resilient structures and habitat for ensuring safer living.
9. To promote a productive and proactive partnership with the media for disaster management.

FUNCTIONS

The NDMA has the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.

The functions of the NDMA are as follows:

1. To lay down policies on disaster management.
2. To approve the National Plan.
3. To approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan.
4. To lay down guidelines to be followed by the State Disaster Management Authorities (SDMAs)[4] in drawing up the State Plan.
5. To lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects.
6. To coordinate the enforcement and implementation of the policy and plan for disaster management.
7. To recommend provision of funds for the purpose of mitigation.
8. To provide such support to other countries affected by major disasters as may be determined by the central government.
9. To take other such measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary.
10. To lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management[5].

ADDITIONAL FUNCTIONS

In addition to the above, the NDMA also performs the following functions:

1. It recommends guidelines for the minimum standards of relief to be provided to persons affected by disaster.
2. It recommends, in cases of disasters of severe magnitude, relief in repayment of loans or grant of fresh loans on concessional terms to the persons affected by such disasters.
3. It exercises the general superintendence, direction and control of the National Disaster Response Force (NDRF). This force has been constituted for the purpose of specialist response to a threatening disaster situation or disaster.
4. It authorises the concerned department or authority to make the emergency procurement of provisions or materials for rescue or relief in any threatening disaster situation or disaster. In such cases, the standard procedure requiring inviting of tenders is deemed to be waived.
5. It prepares an annual report on its activities and submits it to the central government. The central government causes it to be laid before both Houses of Parliament.

STATE DISASTER MANAGEMENT AUTHORITY

Under the Disaster Management Act, 2005, every state government should establish a State Disaster Management Authority (SDMA) for the state.

[4]The Act also provided for the establishment of the State Disaster Management Authorities and the District Disaster Management Authorities.

[5]The National Institute of Disaster Management is located in New Delhi.

Composition

An SDMA consists of a chairperson and other members, not exceeding nine. The Chief Minister of the state is the ex-officio chairperson of the SDMA. The chairperson of the State Executive Committee is the ex-officio member of the SDMA. The other members, not exceeding eight, are nominated by the chairperson of the SDMA. The chairperson of the SDMA designates one of the members as the vice-chairperson of the SDMA. The chairperson of the State Executive Committee acts as the ex-officio chief executive officer of the SDMA.

Functions

An SDMA has the responsibility for laying down policies and plans for disaster management in the state. Its functions include the following:

1. To lay down the state disaster management policy.
2. To approve the State Plan in accordance with the guidelines laid down by the NDMA.
3. To approve the disaster management plans prepared by the departments of the government of the state.
4. To lay down guidelines to be followed by the departments of the government of the state for the purposes of integration of measures for the prevention of disasters and mitigation in their development plans and projects and provide necessary technical assistance thereof.
5. To coordinate the implementation of the State Plan.
6. To recommend the provision of funds for mitigation and preparedness measures.
7. To review the development plans of the different departments of the state and ensure that prevention and mitigation measures are integrated therein.
8. To review the measures being taken for mitigation, capacity building and preparedness by the departments of the government of the state and issue such guidelines as may be necessary.
9. To prepare an annual report on its activities and submit it to the state government. The state government causes it to be laid before the state legislature[6].

DISTRICT DISASTER MANAGEMENT AUTHORITY

Under the Disaster Management Act, 2005, every state government should establish a District Disaster Management Authority (DDMA) for every district in the state.

Composition

A DDMA consists of a chairperson and other members, not exceeding seven. The Collector (or District Magistrate or Deputy Commissioner) of the district is the ex-officio chairperson of the DDMA. The elected representative of the local authority is the ex-officio co-chairperson of the DDMA. But, in case of Tribal Areas (as referred to in the Sixth Schedule to the Constitution of India), the chief executive member of the district council of autonomous district is the ex-officio co-chairperson of the DDMA. The chief executive officer of the DDMA, the superintendent of police and the chief medical officer of the district are the ex-officio members of the DDMA. Not more than two other district level officers are appointed by the state government as the members of the DDMA. In case of a district where Zilla Parishad exists, the chairperson of that Zilla Parishad is the co-chairperson of the DDMA. The chief executive officer of the DDMA is appointed by the state government.

Functions

The DDMA acts as the district planning, coordinating and implementing body for disaster management and takes all measures for the purposes of disaster management in the district in accordance with the guidelines

[6]Before each House of the state legislature where it consists of two Houses, or where such legislature consists of one House, before that House.

laid down by the NDMA and the SDMA. Its functions are as follows:

1. To prepare a disaster management plan including district response plan for the district.
2. To coordinate and monitor the implementation of the National Policy, State Policy, National Plan, State Plan and District Plan.
3. To ensure that the areas in the district vulnerable to disasters are identified and measures for the prevention of disasters and the mitigation of its effects are undertaken by the departments of the government at the district level as well as by the local authorities.
4. To ensure that the guidelines for prevention of disasters, mitigation of its effects, preparedness and response measures as laid down by the NDMA and the SDMA are followed by all departments of the government at the district level and the local authorities in the district.
5. To organise and coordinate specialised training programmes for different levels of officers, employees and voluntary rescue workers in the district.
6. To facilitate community training and awareness programmes for prevention of disaster or mitigation with the support of local authorities, governmental and non-governmental organisations.
7. To set up, maintain, review and upgrade the mechanism for early warnings and dissemination of proper information to the public.
8. To advise, assist and coordinate the activities of the departments of the government at the district level, statutory bodies and other governmental and non-governmental organisations in the district engaged in disaster management.
9. To identify buildings and places which could, in the event of any threatening disaster situation or disaster, be used as relief centres or camps and make arrangements for water supply and sanitation in such buildings or places.
10. To perform such other functions as the state government or SDMA may assign to it or as it deems necessary for disaster management in the District.

CHAPTER 69 Bar Council of India

ESTABLISHMENT

The Bar Council of India (BCI) was established under a legislation enacted by the Parliament, namely, the Advocates Act, 1961. Hence, it is a statutory (and not a constitutional) body.

In 1951, the Government of India appointed an All India Bar Committee under the chairmanship of Justice S.R. Das of the Supreme Court. The mandate of the committee was to examine and report on the issue of re-organisation of the Bar and legal profession in the country. The committee submitted its report in 1953. It recommended, inter alia, the establishment of an All India Bar Council and State Bar Councils (SBCs) to regulate legal profession at the national and state level.

Later, in 1958, the Law Commission of India[1] again repeated and endorsed the above recommendation of the Das Committee. Consequently, the Advocates Act, 1961 was passed by the Parliament to provide for, inter alia, the creation of the BCI and SBCs.

The BCI is an autonomous body. It works under the Department of Legal Affairs of the Union Ministry of Law and Justice[2].

[1]Fourteenth Report on the subject of Reform of Judicial Administration.

[2]The Union Ministry of Law and Justice comprises of three departments, namely, the Department of Legal Affairs, the Department of Justice, and the Legislative Department.

COMPOSITION

The BCI consists of the elected members as well as the ex-officio members. They are as follows:

1. One member elected by each SBC from amongst its members.
2. The Attorney-General of India and the Solicitor-General of India are the ex-officio members.

The BCI shall have a Chairman and a Vice-Chairman. They are elected by the Council from amongst its members. They hold office for a period of two years.

The term of office of a member of the BCI, elected by a SBC, shall be for the period for which he/she holds office as a member of that SBC.

The BCI consists of the following committees:

(i) Disciplinary Committee (one or more)
(ii) Legal Aid Committee (one or more)
(iii) Executive Committee
(iv) Legal Education Committee
(v) Other Committees (if necessary)

FUNCTIONS

The functions of the BCI are as follows:

1. To lay down standards of professional conduct and etiquette for advocates
2. To lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each SBC
3. To safeguard the rights, privileges, and interests of advocates

4. To promote and support law reform
5. To deal with and dispose of any matter which is referred to it by a SBC
6. To exercise general supervision and control over SBCs
7. To promote legal education and to lay down standards of legal education in consultation with the Universities in India imparting legal education and the SBCs
8. To recognise universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect universities. The BCI can also cause the SBCs to visit and inspect universities in accordance with the directions issued by it
9. To conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest
10. To organise legal aid to the poor people
11. To recognise (on a reciprocal basis) foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act
12. To manage and invest its funds
13. To provide for the election of its members.
14. To perform all other functions conferred on it under this Act
15. To do all other things necessary for discharging the above functions.

The BCI may establish funds for the following purposes:

(a) Giving financial assistance to organize welfare schemes for indigent, disabled or other advocates
(b) Giving legal aid or advice
(c) Establishing law libraries

Further, the BCI may also receive grants, donations, gifts, and benefactions for the above purposes.

The BCI can become a member of international legal bodies such as the International Bar Association or the International Legal Aid Association.

STATE BAR COUNCILS

1. Establishment

The Advocates Act, 1961 provides for the establishment of a SBC for each state or a common SBC for two or more states or for a state and a union territory.

At present, there are 24 SBCs. The name and the jurisdiction of all the 24 SBCs are mentioned in Table 69.1.

2. Composition

Any State Bar Council consists of the elected members as well as the ex-officio members. This is explained below:

1. In the case of a SBC with an electorate of five thousand – 15 members; in the case of a SBC with an electorate of five to ten thousand – 20 members; and in the case of SBC with an electorate of more than ten thousand – 25 members. They are elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the SBC. But, one-half of such elected members shall be persons who have for ten years been advocates on a state roll.
2. In case of any SBC, the Advocate-General of the state is the ex-officio member. Similarly, in case of a common SBC, the Advocate-General of each of the states is the ex-officio member. Further, in case of the SBC of Delhi, the Additional Solicitor-General of India is the ex-officio member.

Each SBC shall have a Chairman and a Vice-Chairman. They are elected by the Council amongst its members.

The term of office of an elected member of any SBC is five years. But, if any SBC fails to provide for the election of its members before the expiry of said term, then the BCI may extend the said term for a period of six months.

A State Bar Council consists of the following committees:

(i) Disciplinary Committee (one or more)
(ii) Legal Aid Committee (one or more)
(iii) Executive Committee
(iv) Enrolment Committee
(v) Other Committees (if necessary).

3. Functions

The functions of a State Bar Council are as follows:

1. To admit persons as advocates on its roll
2. To prepare and maintain such roll
3. To entertain and determine cases of misconduct against advocates on its roll
4. To safeguard the rights, privileges, and interests of advocates on its roll
5. To promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes for the indigent, disabled or other advocates
6. To promote and support law reform
7. To conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest
8. To organise legal aid to the poor
9. To manage and invest its funds
10. To provide for the election of its members
11. To visit and inspect universities in accordance with the directions issued by the BCI
12. To perform all other functions conferred on it under this Act
13. To do all other things necessary for discharging the above functions

A SBC may establish funds for the following purposes:

(a) Giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates
(b) Giving legal aid or advice
(c) Establishing law libraries

Further, a SBC may also receive grants, donations, gifts and benefactions for the above purposes.

TYPES OF ADVOCATES[2a]

The Advocates Act, 1961 provides for two categories of Advocates viz., Senior Advocates and other advocates, who are entitled to practice law before the Courts. The exercise of powers vested in the Supreme Court and the High Courts to designate an Advocate as a Senior Advocate is circumscribed by the requirement of due satisfaction that the Advocate concerned fulfills the qualifications prescribed under the Advocates Act, 1961. In terms of the Advocates Act, 1961, an advocate may, with his/her consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his/her ability standing at the Bar or special knowledge or experience in law, he/she is deserving of such distinction.

There are three categories of Advocates who are entitled to practise law before the Supreme Court. These are explained as follows:

1. Senior Advocate

A 'Senior Advocate' means any advocate so designated under the Advocates Act, 1961, and all such advocates whose names were borne on the roll of the senior advocates of the Court immediately before the commencement of the Advocates Act, 1961. The Supreme Court Rules, 2013, deals with designation of Advocates as Senior Advocates. These Rules provide that the Chief Justice of India and the Judges may, with the consent of the Advocate, designate an Advocate as Senior Advocate, if in their opinion, by virtue of his/her ability, standing at the Bar or special knowledge or experience in law, the said Advocate is deserving of such distinction. Apart from the designation of Advocates as Senior Advocates, retired Chief Justices/Judges of the High Courts are also considered for designation as Senior Advocates in the Supreme Court. A Senior Advocate is

[2a]Indian Judiciary: Annual Report 2021-22, The Supreme Court of India, pp. 107–109.

not entitled to appear in the Supreme Court without an Advocate-on-Record.

A Permanent Committee has been constituted by the Chief Justice of India to deal with all matters relating to designation of Senior Advocates in the Supreme Court. The composition of the Committee is as under: (a) Chief Justice of India-Chairperson; (b) Two senior-most Judges of the Supreme Court-Members; (c) Attorney General for India-Member; and (d) A member of the Bar as nominated by the Chairperson and Members of this Committee.

2. | Advocate-on-Record

An 'Advocate-on-Record' means an advocate, who is entitled under the Supreme Court Rules, 2013 to act as well as to plead for a party in the Supreme Court. No Advocate other than an Advocate-on-Record is entitled to file an appearance or act for a party in the Supreme Court.

The Supreme Court at the time of its inception in 1950 inherited the jurisdiction of the Federal Court and the Privy Council. The Rules prevalent in the Federal Court were continued in the beginning. The Practice and Procedure of the Supreme Court has undergone enormous changes ever since. Originally, the Rules of the Supreme Court (as then adopted) recognized the system of "Agents". The Practice and Procedure was substantially modified in the year 1954 and "Advocates-on-Record" replaced the system of "Agents". When introduced in 1954, apart from the then registered "Agents", an Advocate of seven years standing was entitled to get himself/herself registered as an 'Advocate-on-Record', provided he/she fulfilled the conditions prescribed.

In 1959, the Rules were amended, introducing the 'Advocate-on-Record' examination conducted by the Supreme Court. The Registry of the Supreme Court conducts Advocate-on-Record Examination periodically with approval of the Examination Committee and under the supervision of Secretary, Board of Examiners, appointed by the Chief Justice of India. The examination maintains high standards to ensure that best of the talent come in as Advocate-on-Record. A Regulation pertaining to the examination states that no Advocate shall be eligible to appear in the examination unless he/she has received training from an Advocate-on-Record of not less than ten years standing for a continuous period of one year commencing from the end of the fourth year of date of his/her enrolment.

3. | Other Advocates

These are Advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961. They cannot appear, plead and address the Court in any matter on behalf of a party in the Supreme Court unless instructed by an Advocate-on-Record or permitted by the Court.

Table 69.1 Name and Jurisdiction of State Bar Councils

Sl. No.	Name	States & UTs Covered
1.	Bar Council of Andhra Pradesh	Andhra Pradesh
2.	Bar Council of Bihar	Bihar
3.	Bar Council of Gujarat	Gujarat
4.	Bar Council of Jharkhand	Jharkhand
5.	Bar Council of Madhya Pradesh	Madhya Pradesh
6.	Bar Council of Chhattisgarh	Chhattisgarh

(Contd.)

Sl. No.	Name	States & UTs Covered
7.	Bar Council of Karnataka	Karnataka
8.	Bar Council of Orissa	Odisha
9.	Bar Council of Rajasthan	Rajasthan
10.	Bar Council of Telangana	Telangana
11.	Bar Council of Uttar Pradesh	Uttar Pradesh
12.	Bar Council of Uttarakhand	Uttarakhand
13.	Bar Council of Meghalaya	Meghalaya
14.	Bar Council of Manipur	Manipur
15.	Bar Council of Tripura	Tripura
16.	Bar Council of Arunachal Pradesh, Assam, Mizoram and Nagaland	Arunachal Pradesh, Assam, Mizoram and Nagaland
17.	Bar Council of Kerala	Kerala and Lakshadweep
18.	Bar Council of Madras	Tamil Nadu and Puducherry
19.	Bar Council of Maharashtra and Goa	Maharashtra, Goa and Dadra and Nagar Haveli and Daman and Diu
20.	Bar Council of Punjab and Haryana	Punjab, Haryana and Chandigarh
21.	Bar Council of Himachal Pradesh	Himachal Pradesh
22.	Bar Council of West Bengal	West Bengal and Andaman and Nicobar Islands
23.	Bar Council of Delhi	Delhi
24.	Bar Council of Jammu and Kashmir, and Ladakh[3]	Jammu and Kashmir, and Ladakh

[3]Added by the Jammu and Kashmir Reorganisation Act, 2019

CHAPTER 70 Law Commission of India

The Law Commission of India is a non-statutory advisory body. It is established by the order of the Central Government[1] from time to time for a fixed tenure. Its function is to recommend legislative measures for the purpose of consolidation and codification of laws. However, its recommendations are not binding on the government.

HISTORICAL BACKGROUND

During the British regime, four Law Commissions were established in the 19th century. They made a significant contribution towards the enrichment of the Indian Statute Book. They recommended a variety of legislations on the pattern of the then prevailing English laws adopted to Indian conditions. The Indian Penal Code, the Criminal Procedure Code, the Civil Procedure Code, the Indian Contract Act, the Indian Evidence Act, the Transfer of Property Act and some other laws are the products of these four Commissions.

The names of these Commissions, the years in which they were constituted and the names of their Chairmen are mentioned in Table 70.1.

Table 70.1 Pre-independence Law Commissions

Name	Establishment Year	Chairman
First Law Commission	1834	Lord Macaulay
Second Law Commission	1853	Sir John Romilly
Third Law Commission	1861	Sir John Romilly
Fourth Law Commission	1879	Dr Whitney Stokes

COMMISSIONS CONSTITUTED SO FAR

After Independence, the Constitution of India with separate chapters on Fundamental Rights and Directive Principles of State Policy gave a new direction to law reform in the country. Article 372 of the Constitution provides that the pre-Constitution laws shall remain in force until they are amended or repealed. However, there had been demands in Parliament and outside for the establishment of a new Law Commission to recommend the revision and updation of the outmoded and outdated laws to serve the changing needs of the nation. The Government reacted favourably to this demand and established the First Law Commission of independent India in 1955. The term of this Commission was three years and it was headed by MC Setalvad, the then Attorney-General of India.

[1]The order is issued by the Department of Legal Affairs, Ministry of Law and Justice.

Table 70.2 Law Commissions Appointed so far

Law Commission	Duration	Chairman
First	1955–1958	M C Setalvad, Former Attorney-General of India
Second	1958–1961	Justice T V Venkatarama Aiyar
Third	1961–1964	Justice J L Kapur
Fourth	1964–1968	Justice J L Kapur
Fifth	1968–1971	K.V.K. Sundaram, I.C.S.
Sixth	1971–1974	Justice P B Gajendragadkar
Seventh	1974–1977	Justice P B Gajendragadkar
Eighth	1977–1979	Justice H R Khanna
Ninth	1979–1980	Justice P V Dixit
Tenth	1981–1985	Justice K K Mathew
Eleventh	1985–1988	Justice D A Desai
Twelfth	1988–1991	Justice M P Thakkar
Thirteenth	1991–1994	Justice K N Singh
Fourteenth	1995–1997	Justice K Jayachandra Reddy
Fifteenth	1997–2000	Justice B P Jeevan Reddy
Sixteenth	2000–2003	Justice B P Jeevan Reddy (2000–2001), Justice M Jagannadha Rao (2002–2003)
Seventeenth	2003–2006	Justice M Jagannadha Rao
Eighteenth	2006–2009	Justice A R Lakshmanan
Nineteenth	2009–2012	Justice P Venkatarama Reddy
Twentieth	2012–2015	Justice D K Jain (2012–2013), Justice A P Shah (2013–2015)
Twenty-First	2015–2018	Justice B S Chauhan
Twenty-Second	2020–2024[2]	Justice Ritu Raj Awasthi[3]

Since then (1955), twenty-one more Law Commissions have been constituted, each with a three-year term and with different terms of reference. The name of these Commissions, their duration and the name of their Chairmen are given in Table 70.2.

COMPOSITION

The composition of the Commission is not fixed. It varies from one Commission to another. Generally, it consists of a Chairman, some full-time members, a member-secretary and some part-time members depending

[2]The 22nd Law Commission of India was constituted on 21st February, 2020 for a term of three years. Its term ended on 20th February, 2023. The Union Cabinet on 22nd February, 2023 approved the extension of the term of the Commission upto 31st August, 2024.

[3]Though the 22nd Law Commission of India was constituted in February 2020, its chairman and members were appointed after two and a half years in November, 2022.

upon the nature of topics referred to it for consideration.

The Chairman and full-time members are either serving or retired judges of the Supreme Court or High Courts, or legal experts, jurists or professors of law in any university of India.

The Member-Secretary belongs to the Indian Legal Service and holds the rank of either Additional Secretary or Secretary to the Government of India.

The part-time members are appointed from among the eminent members of the bar or eminent scholars in the academic field or persons having specialised knowledge in a particular branch of law.

The Commission's regular staff consists of about a dozen research personnel of different ranks and varied experiences. A small group of secretarial staff looks after the administration side of the Commission's operations.

FUNCTIONS

The functions of the Commission are as follows:

1. To identify laws which are no longer needed or relevant and can be immediately repealed
2. To examine the existing laws in the light of Directive Principles of State Policy and suggest ways of improvement and reform and also suggest such legislations as might be necessary to implement the Directive Principles and to attain the objectives set out in the Preamble of the Constitution
3. To consider and convey to the Government its views on any subject relating to law and judicial administration that may be specifically referred to it by the Government
4. To consider the requests for providing research to any foreign countries as may be referred to it by the Government
5. To take all such measures as may be necessary to harness law and the legal process in the service of the poor
6. To revise the Central Acts of general importance so as to simplify them and remove anomalies, ambiguities and inequities

WORKING

The working of the Commission consists of the following stages:

1. The projects undertaken by the Commission are initiated in its meetings.
2. Priorities are discussed, topics are identified and preparatory work is assigned to the members.
3. Different methodologies for collection of data and research are adopted keeping in view the scope of the proposed reform.
4. A working paper, outlining the problem and suggesting matters deserving reform, emerges as the outcome.
5. This paper is sent out for circulation in the public and concerned interest groups with a view to eliciting reactions and suggestions
6. Responses are evaluated and the information is organised for proper incorporation in the report
7. The report is subjected to close scrutiny by the full Commission in prolonged meetings for its finalisation.
8. The final report is forwarded to the Government (Ministry of Law and Justice)

The reports of the Commission are considered by the Ministry of Law and Justice in consultation with the concerned administrative ministries and are submitted to Parliament from time to time.

Till now, the Commission submitted 277 reports on different subjects. The reports submitted by the 21st Commission are mentioned in Table 70.3.

ROLE

The following points highlight the role of the Commission:

1. The Government gets the benefit of recommendations from a specialised body

on different aspects of law which are entrusted to the Commission for its study and recommendations, as per its terms of reference.

2. The Commission, on a reference made to it by the Central Government or suo-motu, undertakes research in law and reviews existing laws in India for making reforms therein and enacting new legislations.
3. The Commission undertakes studies and research for bringing reforms in the justice delivery systems for the elimination of delay in procedures, speedy disposal of cases, reduction in the cost of litigation, etc.
4. The various Commissions have been able to make an important contribution towards the progressive development and codification of Law of the country.

Table 70.3 Reports submitted by the 21st Law Commission of India (2015-2018)[4]

Report No.	Year of Submission	Subject of the Report
263	2016	The Protection of Children (Inter-Country Removal and Retention) Bill, 2016
264	2017	The Criminal Law (Amendment) Bill, 2017 (Provisions dealing with Food Adulteration)
265	2017	Prospects of Exempting Income Arising out of Maintenance Money of Minor
266	2017	The Advocates Act, 1961 (Regulation of Legal Profession)
267	2017	The Hate Speech
268	2017	Amendments to Criminal Procedure Code, 1973- Provisions Relating to Bail
269	2017	Transportation and House Keeping of Egg Laying Hens (Layers) and Broiler Chickens
270	2017	Compulsory Registration of Marriages
271	2017	Human DNA Profiling – A Draft Bill for the Use and Regulation of DNA Based Technology
272	2017	Assessment of Statutory Framework of Tribunals in India
273	2017	Implementation of 'United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' Through Legislation
274	2018	Review of the Contempt of Courts Act, 1971
275	2018	Legal Framework: BCCI vis-a-vis Right to Information Act, 2005
276	2018	Legal Framework: Gambling and Sports Betting Including in Cricket in India
277	2018	Wrongful Prosecution (Miscarriage of Justice): Legal Remedies

[4]This information is obtained from the official website of the Law Commission of India.

CHAPTER 71 Delimitation Commission of India

The word 'delimitation' literally means the act or process of fixing limits or boundaries of territorial constituencies in a country or a Province having a legislative body. The job of delimitation is assigned to a high-powered body. Such a body is known as Delimitation Commission or a Boundary Commission[1].

RATIONALE OF DELIMITATION

Periodic delimitation and elections constitute the pillars of the Indian parliamentary democracy. The following points clearly bring out the importance of delimitation:

1. Free and fair elections are the hallmark of a truly democratic state. What makes a parliamentary democracy the preferred system of governance is that it allows people to choose their representatives by using the electoral process. Elections are integral to the parliamentary democracy and therefore delimitation of constituencies assumes great importance. Delimitation exercise conducted following the legal provisions and accepted norms secures to the people fair elections. Periodic drawing of electoral boundaries which is what the delimitation process does is therefore a legally mandated exercise in a representative system where single member constituencies are used for electing political representatives[2].
2. Delimitation is a complex matter and needs to be approached sensitively as this provides foundation to democratic exercise of public representations through elections in modern times. Theoretically, delimitation is a stepping stone for creation of a body polity to govern the affairs of public at large through territorial concept of elected representation. It is imperative that such exercises are taken on periodic intervals to reflect the changing ground realities[3].
3. The principle of one man, one vote envisages that there should be parity in the value of votes of electors. Such a parity though ideal for a representative democracy is difficult to achieve. There is some departure in every system following this democratic path. In the matter of delimitation of constituencies, it often happens that the population of the one constituency differs from that of the other constituency. As a result, although both the constituencies elect one member, the value of the vote of the elector in the constituency having lesser population is more than the value of the vote of the elector of the constituency having a larger population[4].

[1]Changing Face of Electoral India: Delimitation 2008, Delimitation Commission of India, p. 1.
[2]Ranjana Prakash Desai, Delimitation Report 2022, p. (i).
[3]Sushil Chandra, Delimitation Report 2022, p. (vii).
[4]This observation was made by the Supreme Court in *R.C. Poudyal* vs. *Union of India* case (1993).

COMMISSIONS ESTABLISHED SO FAR

The Delimitation Commission of India is a statutory (and not a constitutional) body. It is established by the Central Government under the provisions of a law enacted by the Parliament. Its function is to demarcate the boundaries of the Parliamentary and Assembly Constituencies in the country.

The Commission is a powerful body. Its orders have the force of law and cannot be challenged in any court. The orders come into force on a date specified by the President of India. They are laid before the Lok Sabha and the State Legislative Assembly concerned. But, modifications are not permissible therein by them.

So far, four such Commissions have been constituted. The names of these Commissions, the year in which they were established and the name of the Act under which they were established are mentioned in Table 71.1.

CONSTITUTIONAL PROVISIONS

Articles 81, 82, 170, 330 and 332 of the Constitution of India deal with the delimitation of the Parliamentary and Assembly Constituencies. These Articles were amended by the 84th Constitutional Amendment Act of 2001 and the 87th Constitutional Amendment Act of 2003. The cumulative effect of these two amendments to the Constitution is as follows[5]:

1. The total number of existing seats as allocated to various states in the Lok Sabha on the basis of 1971 census shall remain unaltered till the first census to be taken after the year 2026
2. The total number of existing seats in the Legislative Assemblies of all states[6] as fixed on the basis of 1971 census shall also remain unaltered till the first census to be taken after the year 2026
3. The number of seats to be reserved for the Scheduled Castes and Scheduled Tribes in the Lok Sabha and State Legislative Assemblies shall be re-worked out on the basis of 2001 census
4. Each state shall be redelimited into territorial parliamentary and assembly constituencies on the basis of 2001 census and the extent of such constituencies as delimited now shall remain frozen till the first census to be taken after the year 2026
5. The constituencies shall be so re-delimited that population (on the basis of 2001 census) of each parliamentary and assembly constituency in a state shall, so far as practicable, be the same throughout the state

FOURTH DELIMITATION COMMISSION

In pursuance of the above mentioned provisions of the Constitution, the Parliament enacted the Delimitation Act, 2002 and provided for the establishment of a Delimitation Commission. The Commission's task under the Constitution and the Delimitation Act of 2002[7] was to readjust the Parliamentary and Assembly constituencies in all the states of

[5]This information is adopted from the official website of the Election Commission of India.

[6]'State' here does not include the erstwhile state of Jammu and Kashmir, but includes the National Capital Territory of Delhi and the Union Territory of Puducherry.

[7]The Delimitation Act, 2002 was amended in 2003, 2008 and 2016.

Table 71.1 Delimitation Commissions constituted so far

Delimitation Commission	Established in	Established under the Act
First	1952	The Delimitation Commission Act, 1952
Second	1963	The Delimitation Commission Act, 1962
Third	1973	The Delimitation Act, 1972
Fourth	2002	The Delimitation Act, 2002

India (except the erstwhile state of Jammu and Kashmir) on the basis of 2001 census.

The Fourth Delimitation Commission of 2002 was a three-member body. It consisted of the following:

1. The Chairperson who was to be either a serving or a retired judge of the Supreme Court
2. The Chief Election Commissioner or an Election Commissioner nominated by the Chief Election Commissioner was an ex-officio member
3. The State Election Commissioner of concerned State or Union Territory was the other ex-officio member

Additionally, the Commission had ten associate members in respect of each state. Out of them, five were members of the Lok Sabha elected from that state and another five were members of the State Legislative Assembly. Where the number of members of the Lok Sabha in a state was less than five, all such members were the associate members for that state. These associated members were nominated by the Speakers of the Lok Sabha and State Legislative Assemblies concerned. However, these associated members did not have the right to vote or to sign any order of the Commission.

Justice Kuldip Singh, a retired judge of the Supreme Court, was appointed as the Chairperson of the Commission.

IMPLEMENTATION OF THE RECOMMENDATIONS

The Commission submitted its recommendations to the Government in 2007. The President of India signed the notification for implementing the recommendations of the Commission in 2008, thereby redefining Parliamentary and Assembly Constituencies.

The recommendations of the Commission are not applicable to five states, i.e. Assam, Arunachal Pradesh, Manipur, Nagaland and Jharkhand. The Government of India deferred the delimitation exercise in the four north-eastern states and nullified the final order of the Commission for the state of Jharkhand.

The 2009 General Elections to the Lok Sabha for 499 out of 543 Parliamentary constituencies in all the states, National Capital Territory of Delhi and Union Territory of Puducherry (except Assam, Arunachal Pradesh, Manipur, Nagaland, Jharkhand and erstwhile Jammu and Kashmir) were held on the basis of the newly delimited constituencies.

DELIMITATION COMMISSION (2020)

In February 2020[8], the Government of India rescinded its earlier (2008) notifications which had deferred the delimitation exercise in the four north-eastern states of Assam, Arunachal Pradesh, Manipur and Nagaland on the grounds of a likely threat to the unity and integrity of India as well as a serious threat to the peace and public order in these states. The Government had said that there was a significant improvement in the security situation in these states. Further, there was also reduction in insurgency incidents and improvement in law and order of these states making the situation conducive for carrying out the delimitation exercise. Therefore, it appeared that the circumstances that led to the deferring of the delimitation exercised in these states have ceased to exist and that the delimitation of the constituencies as envisaged under the Delimitation Act, 2002 could be carried out now.

Subsequently, in March 2020[9], the Government of India set-up a Delimitation Commission for the purpose of delimitation of Parliamentary and Assembly constituencies in these four north-eastern states and the Union Territory of Jammu and Kashmir (UT of J&K). This Commission consisted of the following members:

(i) Justice Ranjana Prakash Desai, a retired judge of the Supreme Court, as the Chairperson.

[8]Order dated 28th February, 2020 issued by the Ministry of Law and Justice.

[9]Notification dated 6th March, 2020 issued by the Ministry of Law and Justice.

(ii) Sushil Chandra, Election Commissioner, as the ex-officio member.

(iii) The State Election Commissioner of the concerned State or UT, as the other ex-officio member.

The appointment of Justice Ranjana Prakash Desai was for a period of one year or till further orders, whichever was earlier.

The Commission was assigned the following task:

(i) To delimit the constituencies in the above four north-eastern states in accordance with the provisions of the Delimitation Act, 2002.

(ii) To delimit the constituencies in the UT of J&K in accordance with the provisions of the J&K Reorganisation Act, 2019 and the Delimitation Act, 2002.

However, in March 2021[10], the Government of India removed the above four-north eastern states from the Commission's purview. Further, the term of the Commission was also extended by one year (i.e., till March 2022) to enable it to continue with its delimitation work in the UT of J&K. Again, in February 2022[11], the Commission was given another two months' extension (i.e., till May 2022).

The Commission also associated in its work, five members of Lok Sabha elected from the UT of J&K. They were nominated by the Speaker of Lok Sabha. But, they had no voting rights.

The Commission completed its task in May 2022. The report of the Commission is entitled as "Delimited Landscape of Union Territory of Jammu & Kashmir".

DELIMITATION IN J&K[12]

Delimitation exercise conducted in J&K in the past has been different from the one's conducted in the rest of the country because of the region's special status which was withdrawn by the J&K Reorganisation Act, 2019. Until then, delimitation of Lok Sabha seats in J&K was governed by the Constitution of India. But, the delimitation of State Legislative Assembly seats was governed by the Constitution of J&K and the J&K Representation of People Act, 1957.

The Assembly seats in J&K were delimited in 1957, 1966, 1975 and 1995. The last exercise was conducted on the basis of 1981 census. It formed the basis of the state elections in 1996. There was no census in the state in 1991 and no Delimitation Commission was set up by the State Government after 2001 as the State Assembly passed a law putting a freeze on fresh delimitation of seats until the relevant figures for the first census taken after the year 2026 have been published. The J&K Assembly at that time had 111 seats which included 4 seats in Ladakh. Also, 24 seats of these were kept reserved for Pakistan occupied J&K.

The J&K Reorganisation Act, 2019 has provided for the creation of the UT of J&K. This Act has provided for a Legislative Assembly for the UT of J&K and the total number of seats in the Assembly to be filled by direct elections has been fixed as 114. There is also a beneficent provision for nomination of 2 women members to the Assembly by the Lieutenant Governor, if in his/her opinion women are not adequately represented. Further, this Act has also provided that for the area of the UT of J&K under occupation of Pakistan, 24 seats in the Assembly shall remain vacant, and the said area and seats shall be excluded in delimiting the territorial constituencies. Thus, there is an increase of 7 seats in the Legislative Assembly of the UT of J&K.

The present Delimitation Commission was entrusted with the work of delimiting the Parliamentary and Assembly Constituencies in the UT of J&K on the basis of 2011 census and in accordance with the provisions of the J&K Reorganisation Act, 2019 and the provisions of the Delimitation Act, 2002. The 2011 census population had increased more than 100% over the 1981

[10]Notification dated 3rd March, 2021 issued by the Ministry of Law and Justice.

[11]Notification dated 21st February, 2022 issued by the Ministry of Law and Justice.

[12]This information is adopted from the Delimitation Report 2022.

census population of J&K. Since the last delimitation was based on 1981 census, the nature of constituencies had to a large extent become malapportioned.

Having regard to the relevant provisions of the Constitution of India (Article 330 and Article 332), the provisions of the J&K Reorganisation Act, 2019 and the provisions of the Delimitation Act, 2002, the number of seats to be reserved for the SCs and the STs in the Legislative Assembly of the UT of J&K has been worked out on the basis of 2011 census. It is worthwhile to mention here that the Constitution of the erstwhile State of J&K did not provide for reservation of seats for the STs in the Legislative Assembly.

ORDER OF THE COMMISSION

In May 2022[13], the Commission made the final order in respect of the delimitation of Parliamentary and Assembly constituencies in the UT of J&K. The various provisions of this order are as follows:

1. The Commission has treated the J&K as a single entity for the purpose of delimitation. Consequently, all 5 Parliamentary constituencies now have equal number of 18 Assembly Constituencies.
2. Anantnag - Rajouri Parliamentary Constituency has been carved out by combining Anantnag area of the Kashmir region and Rajouri & Poonch area of the Jammu region.
3. Out of the total 90 Assembly constituencies in the J&K, 43 are for the Jammu region and 47 are for the Kashmir region.
4. Creation of 6 new Assembly constituencies for the Jammu region and 1 new Assembly constituency for the Kashmir region.
5. Reservation of 9 Assembly constituencies for the STs. Out of these, 6 are in the Jammu region and 3 are in the Kashmir region.
6. Reservation of 7 Assembly constituencies for the SCs.
7. The Commission has also changed the names of some Assembly constituencies. One Assembly constituency is named as Shri Mata Vaishno Devi.

RECOMMENDATIONS OF THE COMMISSION[14]

During the public hearing, the Commission received number of representations from the Kashmiri migrants and the displaced persons from Pakistan occupied Jammu and Kashmir (PoJ&K)[15]. The delegations of Kashmiri migrants represented before the Commission that they were persecuted and forced to live in exile as refugees in their own country for the last three decades. It was urged that in order to preserve their political rights, seats may be reserved for them in the J&K Assembly and Parliament. The displaced persons from PoJ&K also requested the Commission to reserve few seats for them in the J&K Assembly. Accordingly, the Commission made the following recommendations to the Central Government:

1. **Kashmiri Migrants:** Provision of at least two members (one of them must be a female) from the community of Kashmiri migrants in the J&K Assembly. Such members may be given power at par with the power of nominated members of the Assembly of UT of Puducherry.
2. **Displaced Persons from PoJ&K:** The Central Government may consider giving the displaced persons from PoJ&K some representation in the J&K Assembly. This may be done by way of nomination of representatives of the displaced persons from PoJ&K.

[13]Notification dated 5th May, 2022 issued by the Delimitation Commission.

[14]This information is adopted from the official website of the Election Commission of India.

[15]Persons displaced from PoJ&K during 1947-48, 1965 and 1971.

Table 71.2 National Commissions/Central Bodies and their Nodal Ministries

Sl. No.	Commission / Body	Falls Under
1.	Central Information Commission	Ministry of Personnel
2.	Finance Commission	Ministry of Finance
3.	Union Public Service Commission	Ministry of Personnel
4.	Inter-State Council	Ministry of Home Affairs
5.	Staff Selection Commission	Ministry of Personnel
6.	National Commission for SCs	Ministry of Social Justice & Empowerment
7.	National Commission for STs	Ministry of Tribal Affairs
8.	Central Vigilance Commission	Ministry of Personnel
9.	Zonal Councils	Ministry of Home Affairs
10.	Central Bureau of Investigation	Ministry of Personnel
11.	National Investigation Agency	Ministry of Home Affairs
12.	Commissioner for Linguistic Minorities	Ministry of Minority Affairs
13.	National Commission for Protection of Child Rights	Ministry of Women and Child Development
14.	National Commission for Backward Classes	Ministry of Social Justice & Empowerment
15.	Chief Commissioner for Disabled Persons	Ministry of Social Justice & Empowerment
16.	Central Social Welfare Board	Ministry of Women and Child Development
17.	North Eastern Council	Ministry of Development of the North Eastern Region
18.	Central Administrative Tribunal	Ministry of Personnel
19.	National Commission for Minorities	Ministry of Minority Affairs
20.	National Human Rights Commission	Ministry of Home Affairs
21.	National Commission for Women	Ministry of Women and Child Development
22.	Good and Services Tax Council	Ministry of Finance
23.	Lokpal	Ministry of Personnel
24.	National Disaster Management Authority	Ministry of Home Affairs
25.	Attorney General of India	Ministry of Law and Justice
26.	Solicitor General of India	Ministry of Law and Justice
27.	Law Commission of India	Ministry of Law and Justice
28.	Election Commission of India	Ministry of Law and Justice
29.	Delimitation Commission of India	Ministry of Law and Justice
30.	National Consumer Disputes Redressal Commission	Ministry of Consumer Affairs
31.	Bar Council of India	Ministry of Law and Justice
32.	NITI Aayog	Ministry of Planning
33.	Comptroller and Auditor General of India	Ministry of Finance

PART IX Other Constitutional Dimensions

In this Part...

CHAPTER 72 Co-operative Societies

The *97th Constitutional Amendment Act* of 2011 gave a constitutional status and protection to co-operative societies. In this context, it made the following three changes in the constitution:

1. It made the right to form co-operative societies a fundamental right (Article 19[1]).
2. It included a new Directive Principle of State Policy on promotion of co-operative societies (Article 43-B[2]).
3. It added a new Part IX-B in the Constitution which is entitled "The Co-operative Societies" (Articles 243-ZH to 243-ZT).

CONSTITUTIONAL PROVISIONS

Part IX-B of the constitution contains the following provisions with respect to the co-operative societies:

Incorporation of Co-operative Societies: The state legislature may make provisions for the incorporation, regulation and winding-up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning.

Number and Term of Members of Board and its Office Bearers: The board shall consist of such number of directors as may be provided by the state legislature.[3] But, the maximum number of directors of a co-operative society shall not exceed twenty-one.

The state legislature shall provide for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on the board of every co-operative society having members from such a category of persons.

The term of office of elected members of the board and its office bearers shall be five years from the date of election.[4]

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[1]In Part III of the Constitution, in Article 19, in clause (1), in sub-clause (c), the words "co-operative societies" were inserted.

[2]In Part IV of the Constitution, a new Article 43-B was inserted, which says: "The state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies".

[3]The "board" means the board of directors or the governing body of a co-operative society, by whatever name called, to which the direction and control of the management of the affairs of a society is entrusted to.

[4]An "office bearer" means a President, vice-President, chairperson, vice-chairperson, secretary or treasurer of a co-operative society and includes any other person to be elected by the board of any co-operative society.

The state legislature shall make provisions for co-option of persons having experience in the field of banking, management, finance or specialisation in any other related field, as members of the board. But, the number of such co-opted members shall not exceed two (in addition to twenty-one directors). Further, the co-opted members shall not have the right to vote in any election of the co-operative society or be eligible to be elected as office bearers of the board.

The functional directors of a co-operative society shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors (that is, twenty-one).

Election of Members of Board: The election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members assume office immediately on the expiry of the term of the office of members of the outgoing board.

The superintendence, direction and control of the preparation of electoral rolls and the conduct of elections to a co-operative society shall vest in such body, as may be provided by the state legislature.

Supersession and Suspension of Board and Interim Management: No board shall be superseded or kept under suspension for a period exceeding six months.[5] The board may be superseded or kept under suspension in case

(i) Of its persistent default
(ii) Of negligence in the performance of its duties
(iii) Of committing any act prejudicial to the interests of the co-operative society or its members
(iv) Of there being a stalemate in the constitution or functions of the board
(v) Of the election body having failed to conduct elections in accordance with the provisions of the State Act.

However, the board of any such co-operative society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government.

In case of supersession of a board, the administrator appointed to manage the affairs of such a co-operative society shall arrange for conduct of elections within the period of six months and hand over the management to the elected board.

Audit of Accounts of Co-operative Societies: The state legislature may make provisions for the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year. It shall lay down the minimum qualifications and experience of auditors and auditing firms that shall be eligible for auditing the accounts of the co-operative societies.

Every co-operative society shall be audited by an auditor or auditing firm, appointed by the general body of the co-operative society. But, such an auditor or auditing firm shall be appointed from a panel approved by the State Government or a body authorised by the State Government on this behalf.

The accounts of every co-operative society shall be audited within six months of the close of the financial year.

The audit report of the accounts of an apex co-operative society shall be laid before the state legislature.

Convening of General Body Meetings: The state legislature may provide that the annual general body meeting of every co-operative society shall be convened within a period of six months of the close of the financial year.

Right of a Member to Get Information: The state legislature may provide for access to every member of a co-operative society to the books, information and accounts of the co-operative society. It may also make provisions to ensure the participation of members in the management of the co-operative society. Further, it may provide for co-operative education and training for its members.

[5] In case of cooperative banks, other than multi-state cooperative banks, this period cannot exceed one year.

Returns: Every co-operative society shall file returns, within six months of the close of every financial year, to the authority designated by the State Government. These returns shall include the following matters:

(a) Annual report of its activities
(b) Its audited statement of accounts
(c) Plan for surplus disposal as approved by the general body of the co-operative society
(d) List of amendments to the by-laws of the co-operative society
(e) Declaration regarding date of holding of its general body meeting and conduct of elections when due
(f) Any other information required by the Registrar in pursuance of any of the provisions of the State Act.[6]

Offences and Penalties: The state legislature may make provisions for the offences relating to the co-operative societies and penalties for such offences. Such a law shall include the commission or omission of the following acts as offences:

(a) A co-operative society wilfully makes a false return or furnishes false information
(b) Any person wilfully disobeys any summon, requisition or order issued under the State Act
(c) Any employer who, without sufficient cause, fails to pay to a co-operative society the amount deducted from its employee within a period of fourteen days
(d) Any officer who wilfully fails to handover custody of books, accounts, documents, records, cash, security and other property belonging to a co-operative society to an authorised person
(e) Any person who adopts corrupt practices before, during or after the election of members of the board or office bearers.

[6]The "Registrar" means the Central Registrar appointed by the Central Government in relation to the multi-state co-operative societies and the Registrar for co-operative societies appointed by the state government under the law made by the legislature of a state in relation to co-operative societies.

Application to Multi-state Co-operative Societies: The provisions of this part shall apply to the multi-state co-operative societies subject to the modification that any reference to the "State Legislature", "State Act" or "State Government" shall be construed as a reference to "Parliament", "Central Act" or "Central Government" respectively.

Application to Union Territories: The provisions of this part shall apply to the Union territories. But, the President may direct that the provisions of this part shall not apply to any Union territory or part thereof as he/she may specify in the notification.

Continuance of Existing Laws: Any provision of any law relating to co-operative societies in force in a state immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed or until the expiration of one year from such commencement, whichever is less.[7]

REASONS FOR 97TH AMENDMENT

While introducing this amendment bill in the Parliament, the Government of India gave the following reasons for making this amendment to the Constitution of India:

1. The co-operative sector, over the years, has made significant contribution to various sectors of national economy and has achieved voluminous growth. However, it has shown weaknesses in safeguarding the interests of the members and fulfilment of objects for which these institutions were organised. There have been instances where elections have been postponed indefinitely and nominated office bearers

[7]February 15, 2012, is the date of commencement of the Constitution (Ninety-seventh Amendment) Act, 2011. The Centre has asked state governments to amend their respective State Cooperative Society Act in tune with the Constitution (97th Amendment) Act, 2011 before February 14, 2013.

or administrators have remained in-charge of these institutions for a long time. This reduces the accountability in the management of co-operative societies to their members. Inadequate professionalism in management in many of the co-operative institutions has led to poor services and low productivity. Co-operatives need to run on well-established democratic principles and elections held on time and in a free and fair manner. Therefore, there was a need to initiate fundamental reforms to revitalise these institutions in order to ensure their contribution to the economic development of the country and serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management.

2. The "co-operative societies" is a subject enumerated in Entry 32 of the state list of the Seventh Schedule of the Constitution and the state legislatures have accordingly enacted legislations on co-operative societies. Within the framework of State Acts, growth of co-operatives on large scale was envisaged as part of the efforts for securing social and economic justice and equitable distribution of the fruits of development. It has, however, been experienced that in spite of considerable expansion of co-operatives, their performance in qualitative terms has not been up to the desired level. Considering the need for reforms in the *Co-operative Societies Acts* of the States, consultations with the State Governments have been held at several occasions and in the conferences of state co-operative ministers. A strong need has been felt for amending the Constitution so as to keep the co-operatives free from unnecessary outside interferences and also to ensure their autonomous organisational set up and their democratic functioning.
3. The Central Government was committed to ensure that the co-operative societies in the country function in a democratic, professional, autonomous and economically sound manner. With a view to bring the necessary reforms, it was proposed to incorporate a new part in the Constitution so as to provide for certain provisions covering the vital aspects of working of co-operative societies like democratic, autonomous and professional functioning. It was expected that these provisions will not only ensure the autonomous and democratic functioning of co-operatives, but also ensure the accountability of management to the members and other stakeholders and shall provide for deterrence for violation of the provisions of the law.

CONSTITUTIONAL VALIDITY OF 97TH AMENDMENT

In *Rajendra Shah* case[8] (2013), the Gujarat High Court declared that the 97th Constitutional Amendment Act (2011) inserting Part IX-B is ultra vires the Constitution of India for want of the requisite ratification by the states under Article 368. Further, the court also held that this judgement will not impact amendment made in Article 19(1)(c) (fundamental right to form the co-operative societies) and the insertion of Article 43-B (directive principle on promotion of co-operative societies) in the Constitution of India.

On an appeal made by the Union of India against the above judgement, the Supreme Court (in 2021[9]) upheld the judgement of the Gujarat High Court except to the extent that it strikes down the entirety of Part IX-B of the Constitution of India. Further, the Supreme Court also declared that Part IX-B of the Constitution of India is operative only in so far as it concerns multi-state co-operative societies both within the various states and in the union territories.

[8] *Rajendra N. Shah* vs. *Union of India* (2013).
[9] *Union of India* vs. *Rajendra N. Shah* (2021).

Table 72.1 Articles Related to Co-operative Societies at a Glance

Article No.	Subject-matter
243ZH	Definitions
243ZI	Incorporation of Co-operative Societies
243ZJ	Number and Term of Members of Board and its Office Bearers
243ZK	Election of Members of Board
243ZL	Supersession and Suspension of Board and Interim Management
243ZM	Audit of Accounts of Co-operative Societies
243ZN	Convening of General Body Meetings
243ZO	Right of a Member to Get Information
243ZP	Returns
243ZQ	Offences and Penalties
243ZR	Application to Multi-state Co-operative Societies
243ZS	Application to Union Territories
243ZT	Continuance of Existing Laws

CHAPTER 73 Official Language

Part XVII of the Constitution deals with the official language in Articles 343 to 351. Its provisions are divided into four heads—Language of the Union, Regional languages, Language of the judiciary and texts of laws and Special directives.

LANGUAGE OF THE UNION

The Constitution contains the following provisions in respect of the official language of the Union.

1. Hindi written in *Devanagari* script is to be the official language of the Union. But, the form of numerals to be used for the official purposes of the Union has to be the international form of Indian numerals and not the *Devanagari* form of numerals.
2. However, for a period of fifteen years from the commencement of the Constitution (i.e., from 1950 to 1965), the English language would continue to be used for all the official purposes of the Union for which it was being used before 1950.
3. Even after fifteen years, the Parliament may provide for the continued use of English language for the specified purposes.
4. At the end of five years, and again at the end of ten years, from the commencement of the Constitution, the President should appoint a commission to make recommendations with regard to the progressive use of the Hindi language, restrictions on the use of the English language and other related issues[1].
5. A committee of Parliament is to be constituted to examine the recommendations of the commission and to report its views on them to the President[2].

Accordingly, in 1955, the president appointed an Official Language Commission under the chairmanship of B.G. Kher. The commission submitted its report to the President in 1956. The report was examined by a committee of Parliament constituted in 1957 under the chairmanship of Gobind Ballabh Pant. However, another Official Language Commission (as envisaged by the Constitution) was not appointed in 1960.

Subsequently, the Parliament enacted the Official Languages Act in 1963. The act provides for the continued use of English (even after 1965), in addition to Hindi, for all official purposes of the Union and also for the transaction of business in Parliament. Notably, this act enables the use of English indefinitely (without any time-limit). Further, this act was amended in 1967 to make the use of

[1]The Commission was to consist of a chairman and other members representing the different languages specified in the Eighth Schedule of the Constitution.

[2]The Committee was to consist of 30 members (20 from Lok Sabha and 10 from Rajya Sabha).

English, in addition to Hindi, compulsory in certain cases[3].

REGIONAL LANGUAGES

The Constitution does not specify the official language of different states. In this regard, it makes the following provisions:

1. The legislature of a state may adopt any one or more of the languages in use in the state or Hindi as the official language of that state. Until that is done, English is to continue as official language of that state.

   Under this provision, most of the states have adopted the major regional language as their official language. Notably, the choice of the state is not limited to the languages enumerated in the Eighth Schedule of the Constitution.
2. For the time being, the official language of the Union (i.e., English) would remain the link language for communications between the Union and the states or between various states. But, two or more states are free to agree to use Hindi (instead of English) for communication between themselves.

   The Official Languages Act (1963) lays down that English should be used for purposes of communication between the Union and the non-Hindi states (that is, the states that have not adopted Hindi as their official language). Further, where Hindi is used for communication between a Hindi and a non-Hindi state, such communication in Hindi should be accompanied by an English translation.
3. When the President (on a demand being made) is satisfied that a substantial proportion of the population of a state desire the use of any language spoken by them to be recognised by that state, then he may direct that such language shall also be officially recognised in that state. This provision aims at protecting the linguistic interests of minorities in the states.

LANGUAGE OF THE JUDICIARY AND TEXTS OF LAWS

The constitutional provisions dealing with the language of the courts and legislation are as follows:

1. Until Parliament provides otherwise, the following are to be in the English language only:
   (a) All proceedings in the Supreme Court and in every high court.
   (b) The authoritative texts of all bills, acts, ordinances, orders, rules, regulations and bylaws at the Central and state levels.
2. However, the governor of a state, with the previous consent of the President, can authorise the use of Hindi or any other official language of the state, in the proceedings in the high court of the state, but not with respect to the judgements, decrees and orders passed by it. In other words, the judgements, decrees and orders of the high court must continue to be in English only (until Parliament otherwise provides).
3. Similarly, a state legislature can prescribe the use of any language (other than English) with respect to bills, acts, ordinances, orders, rules, regulations or bylaws, but a translation of the same in the English language is to be published.

The Official Languages Act of 1963 lays down that Hindi translation of acts, ordinances, orders, regulations and bylaws published under the authority of the President are deemed to be authoritative texts. Further, every bill introduced in the Parliament is

[3]These include: (a) resolutions, general orders, rules, notifications, administrative or other reports or press communications issued by the Central government; (b) administrative and other reports and official papers laid before Parliament; and (c) contracts and agreements executed, licences, permits, notices, etc, issued by the Central government or by a corporation or a company owned by the Central government.

to be accompanied by a Hindi translation. Similarly, there is to be a Hindi translation of state acts or ordinances in certain cases.

The Act also enables the governor of a state, with the previous consent of the President, to authorise the use of Hindi or any other official language of the state for judgements, decrees and orders passed by the high court of the state but they should be accompanied by an English translation.

However, the Parliament has not made any provision for the use of Hindi in the Supreme Court. Hence, the Supreme Court hears only those who petition or appeal in English.

The Authorised Translations (Central Laws) Act of 1973 lays down that a translation in any regional language specified in the Eight Schedule to the Constitution (other than Hindi) of any central act, ordinance, order, rule, regulation and bylaw published under the authority of the President in the Official Gazette is deemed to be the authoritative texts thereof in such language.

SPECIAL DIRECTIVES

The Constitution contains certain special directives to protect the interests of linguistic minorities and to promote the development of Hindi language. There are:

Protection of Linguistic Minorities

In this regard, the Constitution makes the following provisions:

1. Every aggrieved person has the right to submit a representation for the redress of any grievance to any officer or authority of the Union or a state in any of the languages used in the Union or in the state, as the case may be. This means that a representation cannot be rejected on the ground that it is not in the official language.
2. Every state and local authority in the state should provide adequate facilities for instruction in the mother-tongue at the primary stage of education for the children belonging to linguistic minority groups. The President can issue necessary directions for this purpose[4].
3. The President should appoint a special officer for linguistic minorities to investigate all matters relating to the constitutional safeguards for linguistic minorities and to report to him/her. The President should place all such reports before the Parliament and send to the state government concerned[5].

Development of Hindi Language

The Constitution imposes a duty upon the Centre to promote the spread and development of the Hindi language so that it may become the *lingua franca* of the composite culture of India.

Further, the Centre is directed to secure the enrichment of Hindi by assimilating the forms, style and expressions used in hindustani and in other languages specified in the Eighth Schedule and by drawing its vocabulary, primarily on Sanskrit and secondarily on other languages.

At present, the Eighth Schedule of the Constitution specifies 22 languages (originally 14 languages). These are Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Odia[6], Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92nd Amendment Act of 2003.

In terms of the Constitutional provisions, there are two objectives behind the specification of the above regional languages in the Eighth Schedule:

(a) the members of these languages are to be given representation in the Official Language Commission; and

[4]This provision was added by the 7th Amendment Act of 1956 on the recommendation of the States Reorganisation Commission.

[5]*Ibid.*

[6]The 96th Amendment Act of 2011 substituted "Odia" for "Oriya".

(b) the forms, style and expression of these languages are to be used for the enrichment of the Hindi language.

COMMITTEE OF PARLIAMENT ON OFFICIAL LANGUAGE[7]

The Official Languages Act (1963) provided for the setting up of a Committee of Parliament on Official Language to review the progress made in the use of Hindi for the official purpose of the Union. Under the Act, this Committee was to be constituted after ten years of the promulgation of the Act (i.e., 26th January, 1965). Accordingly, this Committee was set up in 1976. This Committee comprises of 30 members of Parliament (20 from Lok Sabha and 10 from Rajya Sabha).

It shall be the duty of the Committee to review the progress made in the use of Hindi for the official purposes of the Union and submit a report to the President making recommendations thereon. The President shall cause the report to be laid before each House of Parliament and send it to all the State Governments.

The President may, after consideration of the report, and the views, expressed by the State Governments thereon, issue directions in accordance with the whole or any part of the report.

The Chairman of the Committee is elected by the members of the Committee. As a convention, the Union Home Minister has been elected as Chairman of the Committee from time to time.

The progressive use of Hindi in the Central Government offices is being reviewed by the Committee in the background of the provisions relating to Official Language as provided by the Constitution; the Official Languages Act, 1963 and the Rules framed thereunder. The Committee also takes note of the circulars/instructions etc. issued by the Government in this regard from time to time. The terms of reference of the Committee being comprehensive, it has also been examining other relevant aspects like the medium of instructions in schools, colleges and the universities; mode of recruitment to Central Government services and medium of departmental examination etc.

The Secretariat of the Committee is headed by the Secretary of the Committee. For administrative purposes, this office is subordinate office of Department of Official Language, Ministry of Home Affairs.

[7]This information is downloaded from the website of the Committee of Parliament on Official Language, Ministry of Home Affairs, Government of India.

CLASSICAL LANGUAGE STATUS

In 2004, the Government of India decided to create a new category of languages called as "classical languages".

So far, six languages are granted the classical language status. This is shown in Table 73.1.

Benefits

The following benefits shall be available to the languages declared or notified as Classical Languages[8]:

(i) Two major international awards for scholars of eminence in Classical Indian Languages are awarded annually.

(ii) A 'Centre of Excellence for Studies in Classical Languages' is set up.

(iii) The University Grants Commission be requested to create, to start with at least in the Central Universities, a certain

[8]This information is obtained from the official of the Ministry of Culture, Government of India.

Table 73.1 Languages conferred with Classical Language Status

Sl. No.	Languages	Year of Declaration
1.	Tamil	2004
2.	Sanskrit	2005
3.	Telugu	2008
4.	Kannada	2008
5.	Malayalam	2013
6.	Odia	2014

number of Professional Chairs for Classical Languages for scholars of eminence in Classical Indian Languages.

Criteria

The Government of India laid down the following criteria to determine the eligibility of languages to be considered for classification as a Classical Language[9]:

(i) High antiquity of its early texts/recorded history over a period of 1500-2000 years.

(ii) A body of ancient literature/texts, which is considered a valuable heritage by generations of speakers.

(iii) The literary tradition be original and not borrowed from another speech community.

(iv) The classical language and literature being distinct from modern, there may also be a discontinuity between the classical language and its later forms or its offshoots.

[9]Ibid.website

Table 73.2 Articles Related to Official Language at a Glance

Article No.	Subject-matter
	Language of the Union
343.	Official language of the Union
344.	Commission and Committee of Parliament on official language
	Regional Languages
345.	Official language or languages of a state
346.	Official language for communication between one state and another or between a state and the Union
347.	Special provision relating to language spoken by a section of the population of a state
	Language of the Supreme Court, High Courts, etc.
348.	Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.
349.	Special procedure for enactment of certain laws relating to language
	Special Directives
350.	Language to be used in representation for redress of grievances
350A.	Facilities for instruction in mother-tongue at primary stage
350B.	Special Officer for linguistic minorities
351.	Directive for development of the Hindi language

CHAPTER 74 Public Services

CLASSIFICATION OF SERVICES

The public services (civil services or government services) in India are classified into three categories—all-India services, Central services and state services. Their meaning and composition are explained below:

All-India Services

All-India services are those services which are common to both Central and state governments. The members of these services occupy top positions (or key posts) under both the Centre and the states and serve them by turns.

At present, there are three all-India services. They are:

1. Indian Administrative Service (IAS)
2. Indian Police Service (IPS)
3. Indian Forest Service (IFoS)

In 1947, the Indian Civil Service (ICS) was replaced by IAS, and the Indian Police (IP) was replaced by IPS and were recognised by the Constitution as all-India services. In 1966, the Indian Forest Service was established as the third all-India service[1].

Article 312 of the Constitution authorises the Parliament of India to create new All-India Services based on a resolution passed by Rajya Sabha to that effect. Thus, a new All-India Service can be created only by an act of Parliament and not by a resolution of Rajya Sabha. However, the Parliament cannot do so without the recommendation of Rajya Sabha. This power is given to the Rajya Sabha to protect the interests of states in the Indian federal system.

Interestingly, the Drafting Committee of the Constituent Assembly did not provide a constitutional status to the All-India Services. Accordingly, the Draft Constitution did not make any mention of the All-India Services. However, the Constituent Assembly included provisions with respect to the All-India Services, which were approved. These provisions (under Article 312) not only gave a constitutional status to the All-India Services but also provided for the creation of new All-India Services. Sardar Vallabhbhai Patel was the chief protagonist of All-India Services in the Constituent Assembly. Hence, he came to be regarded as the 'Father of All-India Services'.

The All-India Services Act of 1951 authorised the Central Government to make rules in consultation with the state governments for the regulation of recruitment and service conditions of the members of All-India Services. The members of these Services are recruited and trained by the Central Government but are assigned to different states for work. They are borne on different state cadres; the Centre having no cadre of its own in this regard. They serve the Central Government on deputation and after completing their fixed tenure, they go back to their respective states. The Central Government obtains the services of these officers on deputation under the well-known tenure system. It must be mentioned here that

[1] In 1963, a provision was made for the creation of three more all-India services. They were Indian Forest Service, Indian Medical and Health Service and Indian Service of Engineers. However, out of these three, only the Indian Forest Service came into existence in 1966.

irrespective of their division among different states, each of these All-India Services form a single service with common rights and status and uniform scales of pay throughout the country. All the three All-India Services are Class-I (Group-A) Services.

The All-India Services have three categories. They are:

- Super time scale
- Senior scale
- Junior scale

In the beginning, the officers are appointed in the junior scale. In the course of time, they are placed in the senior scale and the super time scale.

The three All-India Services are managed and controlled by three different Ministries of the Central Government. They are:

- IAS by the Ministry of Personnel, Public Grievances and Pensions
- IPS by the Ministry of Home Affairs
- IFoS by the Ministry of Environment, Forest and Climate Change

It must be mentioned here that the All-India Services are controlled jointly by the Central and state governments. The ultimate control lies with the Central Government while the immediate control vests with the state governments. Their salaries and pensions are met by the states. However, the disciplinary action (imposition of penalties) against these officers can only be taken by the Central government.

Presently, there are twenty-six state cadres in all for the All-India Services. This includes two joint cadres – (i) Assam-Meghalaya and (ii) Arunachal Pradesh, Goa, Mizoram and the Union Territories (AGMUT).

Central Services

The personnel of Central Services work under the exclusive jurisdiction of the Central Government. They man specialised (functional and technical) positions in various departments of the Central Government. Most of them are controlled and managed by their respective ministries/departments, while a few of them are controlled and managed by the Ministry of Personnel. It (Ministry of Personnel) also determines the general policies pertaining to all the Central Services. In fact, the Ministry of Personnel is the central personnel agency in the Government of India.

Before independence, the Central Services were classified into Class I, Class II, Subordinate and Inferior services. After independence, the nomenclature of Subordinate and Inferior Services was replaced by Class III and Class IV Services on the recommendation of the First Pay Commission (1946–1947). Again in 1974, the classification of Central Services into Class I, Class II, Class III and Class IV was changed to Group A, Group B, Group C and Group D, respectively. This was done on the recommendation of the Third Pay Commission (1970–1973). Thus, as of now, the Central Services are classified into four categories. They are:

- Central Services, Group A
- Central Services, Group B
- Central Services, Group C
- Central Services, Group D

The number of Group A Central services has been increasing over the years. At present, there are 66 Group A Central Services. Some of them are listed below:

1. Indian Foreign Service
2. Indian P&T Accounts and Finance Service
3. Indian Postal Service
4. Indian Railway Accounts Service
5. Indian Railway Personnel Service
6. Indian Railway Traffic Service
7. Indian Audit and Accounts Service
8. Indian Information Service
9. Indian Defence Accounts Service
10. Indian Civil Accounts Service
11. Indian Revenue Service (Income Tax)
12. Indian Revenue Service (Customs & Indirect Taxes)
13. Indian Railway Service of Mechanical Engineers
14. Indian Railway Service of Electrical Engineers
15. Indian Railway Service of Engineers
16. Indian Telecommunication Service
17. Indian Trade Service

18. Indian Defence Estates Service
19. Indian Supply Service
20. Indian Inspection Service
21. Central Health Service
22. Indian Railway Medical Service
23. Indian Ordnance Factories Health Service
24. Indian Economic Service
25. Indian Statistical Service
26. Indian Cost Accounts Service
27. Defence Quality Assurance Service
28. Indian Legal Service
29. Indian Corporate Law Service
30. Central Labour Service

Most of the above cadres of Group A Central Services have also corresponding Group B Services. The Group C Central Services consists of clerical personnel while Group D consists of manual personnel. Thus Group A and Group B comprises of gazetted officers while Group C and Group D are non-gazetted Class.

It must also be mentioned here that the Indian Foreign Service (IFS) is the top most Central Service in terms of prestige, status, pay and emoluments. In fact, it (though a Central Service) competes with the All-India Services in position, status and pay scales. It comes next to the IAS in ranking and its pay scale is higher than the IPS. It is managed by the Ministry of External Affairs. Its recruits serve the Indian missions and embassies abroad.

State Services

The personnel of state services work under the exclusive jurisdiction of the state government. They hold different positions (general, functional and technical) in the departments of the state government. However, they occupy lower positions (in the administrative hierarchy of the state) than those held by the members of the all-India services (IAS, IPS and IFoS).

The number of services in a state differ from state to state. The services that are common to all the states are:

1. Civil Service.
2. Police Service.
3. Forest Service.
4. Agricultural Service.
5. Medical Service.
6. Veterinary Service.
7. Fisheries Service.
8. Judicial Service.
9. Public Health Service.
10. Educational Service.
11. Co-operative Service.
12. Registration Service.
13. Sales Tax Service.
14. Jail Service.
15. Service of Engineers.

Each of these services is named after the state, that is, name of the state is added as a prefix. Among all the state services, the civil service (also known as the administrative service) is the most prestigious.

Like the Central services, the state services are also classified into four categories: class I (group I or group A), class II (group II or group B), class III (group III or group C) and class IV (group IV or group D).

Further, the state services are also classified into gazetted class and non-gazetted class. Usually, Class I (Group-A) and Class-II (Group-B) Services are gazetted classes while Class-III (Group-C) and Class-IV (Group-D) services are non-gazetted classes. The names of the members of gazetted class are published in the Government Gazette for appointment, transfer, promotion and retirement, while those of the non-gazetted are not published. Further, the members of the gazetted class enjoy some privileges which are denied to the members of non-gazetted class. Also, the members of the gazetted class are called 'officers' while those of non-gazetted are called 'employees'.

The All-India Services Act of 1951 specifies that senior posts not exceeding thirty-three and one third per cent in the Indian Administrative Service (IAS), Indian Police Service (IPS) and Indian Forest Service (IFoS) are required to be filled in by promotion of officers employed in the state services. Such promotions are made on the recommendation of selection committee constituted for this purpose in each state. Such a committee is presided over by the Chairman or a member of UPSC.

CONSTITUTIONAL PROVISIONS

Articles 308 to 314 in part XIV of the Constitution contain provisions with regard to all-India services, Central services and state services.

1. Recruitment and Service Conditions

Article 309 empowers the Parliament and the state legislatures to regulate the recruitment and the conditions of service of the persons appointed to public services and posts under the Centre and the states, respectively. Until such laws are made, the President or the governor can make rules to regulate these matters.

Recruitment includes any method provided for inducting a person in public service like appointment, selection, deputation, promotion and appointment by transfer.

The conditions of service of a public servant includes pay, allowances, periodical increments, leave, promotion, tenure or termination of service, transfer, deputation, various types of rights, disciplinary action, holidays, hours of work and retirement benefits like pension, provident fund, gratuity and so on.

Under this provision, the Parliament or the state legislature can impose 'reasonable' restrictions on the Fundamental Rights of public servants in the interests of integrity, honesty, efficiency, discipline, impartiality, secrecy, neutrality, anonymity, devotion to duty and so on. Such restrictions are mentioned in the conduct rules like Central Services (Conduct) Rules, Railway Services (Conduct) Rules and so on.

2. Tenure of Office (Doctrine of Pleasure)

According to Article 310, members of the defence services, the civil services of the Centre and the all-India services or persons holding military posts or civil posts[2] under the Centre, hold office during the pleasure of the President. Similarly, members of the civil services of a state or persons holding civil posts under a state, hold office during the pleasure of the governor of the state.

However, there is an exception to this general rule of dismissal at pleasure. The President or the governor may (in order to secure the services of a person having special qualifications) provide for the payment of compensation to him/her in two cases: (i) if the post is abolished before the expiration of the contractual period, or (ii) if he/she is required to vacate that post for reasons not connected with misconduct on his/her part. Notably, such a contract can be made only with a new entrant, that is, a person who is not already a member of a defence service, a civil service of the Centre, an all-India service or a civil service of a state.

3. Safeguards to Civil Servants

Article 311 places two restrictions on the above 'doctrine of pleasure'. In other words, it provides two safeguards to civil servants against any arbitrary dismissal from their posts:

(a) A civil servant cannot be dismissed or removed[3] by an authority subordinate to that by which he/she was appointed.

(b) A civil servant cannot be dismissed or removed or reduced in rank except after an inquiry in which he/she has been informed of the charges against him/her and given a reasonable opportunity of being heard in respect of those charges.

The above two safeguards are available only to the members of the civil services of the Centre, the all-India services, the civil services of a state or to persons holding civil posts under the Centre or a state and not to

[2]A 'civil post' means an appointment or office or employment on the civil side of the administration as distinguished from the military side.

[3]The difference between dismissal and removal is that the former disqualifies for future employment under the government while the latter does not disqualify for future employment under the government.

the members of defence services or persons holding military posts.

However, the second safeguard (holding inquiry) is not available in the following three cases:

(a) Where a civil servant is dismissed or removed or reduced in rank on the ground of conduct which has led to his/her conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or remove a civil servant or to reduce him/her in rank is satisfied that for some reason (to be recorded in writing), it is not reasonably practicable to hold such inquiry; or

(c) Where the President or the governor is satisfied that in the interest of the security of the state, it is not expedient to hold such inquiry.

Originally, the opportunity of being heard was given to a civil servant at two stages—at the inquiry stage, and at the punishment stage. But, the 42nd Amendment Act of 1976 abolished the provision for second opportunity (that is, the right of a civil servant to make representation against the punishment proposed as a result of the findings of the inquiry). Hence, the present position is that where it is proposed (after inquiry) to impose upon a civil servant the punishment of dismissal, removal or reduction in rank, it may be imposed on the basis of the evidence adduced at the inquiry without giving him/her any opportunity of making representation on the penalty proposed.

The Supreme Court held that the expression 'reasonable opportunity of being heard' envisaged to a civil servant (in the second safeguard mentioned above) includes:

(a) an opportunity to deny his/her guilt and establish his/her innocence which he/she can only do if he/she is told what the charges levelled against him/her are and the allegations on which such charges are based;

(b) an opportunity to defend himself/herself by cross-examining the witnesses produced against him/her and by examining himself/herself or any other witnesses in support of his/her defence; and

(c) the disciplinary authority must supply a copy of the inquiry officer's report to the delinquent civil servant for observations and comments before the disciplinary authority considers the report.

4. All-India Services

Article 312 makes the following provisions in respect of all-India services:

(a) The Parliament can create new all-India services (including an all-India judicial service), if the Rajya Sabha passes a resolution declaring that it is necessary or expedient in the national interest to do so. Such a resolution in the Rajya Sabha should be supported by two-thirds of the members present and voting. This power of recommendation is given to the Rajya Sabha to protect the interests of states in the Indian federal system.

(b) Parliament can regulate the recruitment and conditions of service of persons appointed to all-India services. Accordingly, the Parliament has enacted the All-India Services Act, 1951 for the purpose.

(c) The services known at the commencement of the Constitution (that is, January 26, 1950) as the Indian Administrative Service and the Indian Police Service are deemed to be services created by Parliament under this provision.

(d) The all-India judicial service should not include any post inferior to that of a district judge. A law providing for the creation of this service is not to be deemed as an amendment of the Constitution for the purposes of Article 368.

Though the 42nd Amendment Act of 1976 made the provision for the creation of all-India judicial service, no such law has been made so far.

5. Other Provisions

Article 312A (inserted by the 28th Amendment Act of 1972) confers powers on the Parliament to vary or revoke the conditions of service of persons who were appointed to a civil service of the Crown in India before 1950. Article 313 deals with transitional provisions and says that until otherwise provided, all the laws in force before 1950 and applicable to any public service would continue. Article 314 which made provision for protection of existing officers of certain services was repealed by the 28th Amendment Act of 1972.

Table 74.1 Articles Related to Public Services at a Glance

Article No.	Subject-matter
308.	Interpretation
309.	Recruitment and conditions of service of persons serving the Union or a state
310.	Tenure of office of persons serving the Union or a state
311.	Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a state
312.	All-India Services
312A.	Power of Parliament to vary or revoke conditions of service of officers of certain services
313.	Transitional provisions
314.	Provision for protection of existing officers of certain services (Repealed)

CHAPTER 75 Rights and Liabilities of the Government

Articles 294 to 300 in Part XII of the Constitution deal with the property, contracts, rights, liabilities, obligations and suits of the Union and the states. In this regard, the Constitution makes the Union or the states as juristic (legal) persons.

PROPERTY OF THE UNION AND THE STATES

1. | Succession

All property and assets that were vested in the Dominion of India or a province or an Indian princely state, before the commencement of the present Constitution, became vested in the Union or the corresponding state.

Similarly, all rights, liabilities and obligations of the government of the dominion of India or a province or an Indian state would now be the rights, liabilities and obligations of the Government of India or the corresponding state.

2. | Escheat, Lapse and *Bona Vacantia*

Any property in India that would have accrued to the King of England or ruler of the Indian state (princely) by escheat (death of a person inte-state without any heir), lapse (termination of rights through disuse or failure to follow appropriate procedures) or *bona vacantia* (property found without any owner) for want of a rightful owner, would now vest in the state if the property is situated there, and in the Union, in any other case. In all these three cases, the property accrues to the government as there is no rightful owner (claimant).

3. | Sea-Wealth

All lands, minerals and other things of value under the waters of the ocean within the territorial waters of India, the continental shelf of India and the exclusive economic zone of India vests in the Union. Hence, a state near the ocean cannot claim jurisdiction over these things.

India's territorial waters extend to a distance of 12 nautical miles from the appropriate baseline. Similarly, India's exclusive economic zone extends upto 200 nautical miles[1].

4. | Compulsory Acquisition by Law

The Parliament as well as the state legislatures are empowered to make laws for the compulsory acquisition and requisitioning of private property by the governments. Further, the 44th Amendment Act (1978) has also abolished the constitutional obligation to pay compensation in this regard except in two cases: (a) when the government acquires the property of a minority educational institution; and (b) when the government acquires the land held by a person under his personal

[1]Under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, passed by the Parliament after the 40th Constitutional Amendment Act, 1976.

cultivation and the land is within the statutory ceiling limits[2].

5. Acquisition under Executive Power

The Union or a state can acquire, hold and dispose of property under the exercise of its executive power.

Further, the executive power of the Union or a state extends to the carrying on any trade or business within and in other states also.

SUITS BY OR AGAINST THE GOVERNMENT

Article 300 of the Constitution deals with the suits by or against the Government in India. It lays down that the Government of India may sue or be sued by the name of the Union of India and government of a state may sue or be sued by the name of that state, eg, State of Andhra Pradesh or State of Uttar Pradesh and so on. Thus, the Union of India and states are legal entities (juristic personalities) for purposes of suits and proceedings, not the Government of the Union or the government of states.

Regarding the extent of the governmental liability, the Constitution (Article 300) declares that the Union of India or states can sue or be sued in relation to their respective affairs in the like cases as the dominion of India and the corresponding provinces or Indian states might have sued or been sued before the Constitution. This provision is subject to any law made by Parliament or a state legislature. But, no such law has been enacted so far. Hence, at present, the position in this respect remains the same as it existed before the Constitution. In the pre-Constitution period (i.e., from the days of the East India Company up to the commencement of the Constitution in 1950), the government was suable for contracts but not for torts (wrongs committed by its servants) in respect of its sovereign functions. This is explained in detail as follows:

1. Liability for Contracts

Under the exercise of its executive power, the Union or a state can enter into contracts for the acquisition, holding and disposal of property, or to carry on any trade or business, or for any other purpose. But, the Constitution lays down three conditions which must be fulfilled by such contracts:

(a) They must be expressed to be made by the president or governor, as the case may be;
(b) They must be executed on behalf of the president or governor, as the case may be; and
(c) They must be executed by such a person or in such a manner as the president or governor may direct or authorise.

These conditions are mandatory and not merely directory in nature. Failure to comply with them nullifies the contracts and renders them void and unenforceable in the courts.

Further, the president or the governor is not personally liable in respect of any contract executed in his name. Similarly, the officer executing the contract is also not personally liable. This immunity is purely personal and does not immunize the government from contractual liability, making the government suable in contracts. This means that the contractual liability of the Union government and the state governments is the same as that of an individual under the ordinary law of contract, which has been the position in India since the days of the East India Company.

2. Liability for Torts

In the beginning, the East India Company was only a trading body. Gradually, it acquired territories in India and became a sovereign authority. The Company was suable for its functions as a trader but not as a sovereign.

[2]The first provision was added by the 44th Amendment Act (1978). This amendment abolished the Fundamental Right to property and made it a legal right. The second provision was added by the 17th Amendment Act (1964).

This immunity of the Company in respect of its sovereign functions was based on the English Common Law maxim that the 'King can do no wrong', which means that the King was not liable for the wrongs of his servants. This traditional immunity of the State (i.e., Crown) in Britain from any legal liability for any action has been done away with by the Crown Proceedings Act (1947). However, the position in India still remains the same.

Therefore, the government (Union or states) in India can be sued for torts (civil wrongs) committed by its officials only in the exercise of its non-sovereign functions but not in the sovereign functions like administering justice, constructing a military road, commandeering goods during war, etc. This distinction between the sovereign and non-sovereign functions of the Government in India and the immunity of the government in respect of its sovereign functions was established in the famous *P and O Steam Navigation Company* case[3] (1861). This was reaffirmed by the Supreme Court in the post-independence era in the *Kasturilal* case[4] (1964). However, after this case, the Supreme Court started giving a restrictive interpretation of sovereign functions of the government and awarded compensation to victims in a large number of cases.

In *Nagendra Rao* case[4a] (1994), the Supreme Court criticised the doctrine of sovereign immunity of the State and adopted a liberal approach with respect to the tortuous liability of the State. It ruled that when a citizen suffers any damage due to the negligent act of the servants of the State, the State would be liable to pay compensation for it and the State cannot avoid this liability on the ground of sovereign immunity. It held that in the modern sense, the distinction between sovereign and non-sovereign functions does not exist. It laid down the proposition that barring a few functions, the State cannot claim any immunity. Its observations, in this case, are as follows:

1. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy.
2. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at par with any other juristic legal entity. Any water-tight compartmentalisation of the functions of the State as "sovereign" and "non-sovereign" or "governmental" and "non-governmental" is not sound. It is contrary to modern jurisprudential thinking.
3. The need of the State, the duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. In a welfare State, the functions of the State are not only the defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of the people in almost every sphere—educational, commercial, social, economic, political and even marital.
4. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc., which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity.

[3] *Peninsular and Oriental Steam Navigation Company* vs. *Secretary of State for India* (1861).
[4] *Kasturilal* vs. *State of UP* (1964).
[4a] *N. Nagendra Rao & Co.* vs. *State of Andhra Pradesh* (1994).

In the above case, the Supreme Court did not overrule its judgement in the *Kasturilal* case (1964). However, it said that it is applicable to rare and limited cases.

In *Common Cause* case[4b] (1999), the Supreme Court again examined the whole doctrine and rejected the sovereign immunity rule. The Court held that the rule of State liability as laid down in *P and O Steam Navigation Company* case is very outmoded. It said that in modern times when the State activities have been considerably increased it is very difficult to draw a line between its sovereign and non-sovereign functions. The increased activities of the State have made a deep impression on all facets of citizens' life, and therefore, the liability of the State must be made co-extensive with the modern concept of a welfare State. The State must be liable for all tortuous acts of its employees, whether done in exercise of sovereign or non-sovereign powers[4c]. Finally, the court observed that the efficacy of *Kasturilal* case as a binding precedent has been eroded.

In the *Prisoner's Murder* case[4d] (2000), the Supreme Court ruled that in the process of judicial advancement *Kasturilal* case has paled into insignificance and is no longer of any binding value.

SUITS AGAINST PUBLIC OFFICIALS

1. President and Governor

The Constitution confers certain immunities to the president of India and governor of states with regard to their official acts and personal acts. These are:

(a) Official Acts The president and the governors cannot be sued during the term of their office or thereafter, for any act done by them in the exercise and performance of their official powers and duties. However, the official conduct of the president can be reviewed by a court, tribunal or any other body authorised by either House of Parliament to investigate charges for impeachment. Further, the aggrieved person can bring appropriate proceedings against the Union of India instead of the president and the state instead of the Governor of that state.

(b) Personal Acts No criminal proceedings can be started against the president and the governors in respect of their personal acts nor can they be arrested or imprisoned. This immunity is limited to the period of the term of their office only and does not extend beyond that. However, civil proceedings can be started against them during their term of office in respect of their personal acts after giving two months' advance notice.

2. Ministers

The Constitution does not grant any immunity to the ministers for their official acts. But, since they are not required to countersign (as in Britain) the official acts of the president and the governors, they are not liable in the courts for those acts[5]. Moreover, they are not liable for the official acts done by the president and the governors on their advice as the courts are debarred from inquiring into such advice. However, the ministers do not enjoy any immunity for their personal acts, and can be sued for crimes as well as torts in the ordinary courts like common citizens.

3. Judicial Officers

The judicial officers enjoy immunity from any liability in respect of their official acts and hence, cannot be sued. The Judicial Officers Protection Act (1850) lays down that, 'no judge, magistrate, justice of peace, collector or other person acting judicially shall be liable

[4b] *Common Cause, Registered Society* vs. *Union of India* (1999).

[4c] J.N. Pandey, *The Constitutional Law of India*, 49th Edition, Central Law Agency, p. 682.

[4d] *State of A.P.* vs. *Challa Ramkrishna Reddy* (2000).

[5] In Britain, the ministers are required to countersign the official acts of the crown and are held liable in the courts for those acts.

to be sued in any civil court for any act done by him in the discharge of his official duty'.

4. Civil Servants

Under the Constitution, the civil servants are conferred personal immunity from legal liability for official contracts. This means that the civil servant who made a contract in his official capacity is not personally liable in respect of that contract but it is the government (Central or state) that is liable for the contract. But, if the contract is made without complying the conditions specified in the Constitution, then the civil servant who made the contract is personally liable. Further, the civil servants also enjoy immunity from legal liability for their tortious acts in respect of the sovereign functions of the government. In other cases, the liability of the civil servants for torts or illegal acts is the same as of any ordinary citizen. Civil proceedings can be instituted against them for anything done in their official capacity after giving a two months' advance notice. But, no such notice is required when the action is to be brought against them for the acts done outside the scope of their official duties. Criminal proceedings can be instituted against them for acts done in their official capacity, with the prior permission of the president or the governor, where necessary[6].

[6]Criminal Procedure Code says—where a public servant who is not removable from his office save by or with the sanction of the Central or state government is accused of an offence, committed by him while acting or purporting to act in the discharge of his official duty, no court can take cognizance of such offence without the previous sanction of the Central government or the state government, as the case may be.

Table 75.1 Articles Related to Rights and Liabilities of the Government at a Glance

Article No.	Subject-matter
294.	Succession to property, assets, rights, liabilities and obligations in certain cases
295.	Succession to property, assets, rights, liabilities and obligations in other cases
296.	Property accruing by escheat or lapse or as *bona vacantia*
297.	Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union
298.	Power to carry on trade, etc.
299.	Contracts
300.	Suits and proceedings
361.	Protection (immunities) of President and Governors

CHAPTER 76 Special Provisions Relating to Certain Classes

RATIONALE OF SPECIAL PROVISIONS

In order to realise the objectives of equality and justice as laid down in the Preamble, the Constitution makes special provisions for the scheduled castes (SCs), the scheduled tribes (STs), the backward classes (BCs) and the Anglo-Indians. These special provisions are contained in Part XVI of the Constitution from Articles 330 to 342A. They are related to the following:

1. Reservation in Legislatures
2. Special Representation in Legislatures
3. Reservation in Services and Posts
4. Educational Grants
5. Appointment of National Commissions
6. Appointment of Commissions of Investigation

These special provisions can be classified into the following broad categories:

(a) Permanent and Temporary – Some of them are a permanent feature of the Constitution, while some others continue to operate only for a specified period.

(b) Protective and Developmental – Some of them aim at protecting these classes from all forms of injustice and exploitation, while some others aim at promoting their socio-economic interests.

SPECIFICATION OF CLASSES

The Constitution does not specify the castes or tribes which are to be called the SCs or the STs. It leaves to the President the power to specify as to what castes or tribes in each state and union territory are to be treated as the SCs and STs. Thus, the lists of the SCs or STs vary from state to state and union territory to union territory. In case of the states, the President issues the notification after consulting the governor of the state concerned. But, any inclusion or exclusion of any caste or tribe from Presidential notification can be done only by the Parliament and not by a subsequent Presidential notification. Presidents have issued several orders specifying the SCs and STs in different states and union territories and these have also been amended by the Parliament.[1]

Similarly, the constitution has not specified the classes of citizens who are to be called the socially and educationally backward classes, also known as Other Backward Classes (OBCs). The 102nd Amendment Act of 2018 provided that the President may with respect to any state or union territory specify the socially and educationally backward classes which shall for the purposes of the constitution be deemed to be socially and educationally backward classes in relation to that state or union territory. Later, the 105th Amendment Act of 2021 modified the above provision by providing that the President may with respect to any state or union territory

[1]These are the Constitution (Scheduled Castes) Order, 1950; the Constitution (Scheduled Castes) (Union Territories) Order, 1951; the Constitution (Scheduled Tribes) Order, 1950; the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 and so on. The Parliament modified the Presidential orders by enacting the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act in 1956, in 1976 and in the subsequent years.

specify the socially and educationally backward classes in the Central List which shall for the purposes of the central government be deemed to be socially and educationally backward classes in relation to that state or union territory. In case of a state, the President issues the notification after consultation with the governor of the state concerned. But, any inclusion in or exclusion from the Central List of socially and educationally backward classes specified in a Presidential notification can be done only by the Parliament and not by a subsequent Presidential notification[2]. The 105th Amendment Act of 2021 also explained that the expression "Central List" means the list of socially and educationally backward classes prepared and maintained by and for the central government.

Further, the 105th Amendment Act of 2021 empowered a state or union territory to prepare and maintain a list of socially and educationally backward classes for its own purposes. The entries in a State List or Union Territory List may be different from the Central List. However, this can be done by a state or union territory only by law.

Unlike in the case of SCs, STs and OBCs, the Constitution has defined the persons who belong to the Anglo-Indian community. Accordingly, 'an Anglo-Indian means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only'.

SPECIAL PROVISIONS FOR SCs AND STs

1. ***Reservation for SCs and STs in Legislatures:*** Seats are to be reserved for the SCs and STs in the Lok Sabha and the state legislative assemblies on the basis of population ratios.

   Originally, this provision of reservation was to operate for ten years (i.e., up to 1960) only. But, this duration has been extended continuously since then by ten years each time. Now, under the *104th Amendment Act* of 2019, this provision of reservation is to last until 2030.[3]
2. ***Claims of SCs and STs to Services and Posts:*** The claims of the SCs and STs are to be taken into consideration while making appointments to the public services of the Centre and the states, without sacrificing the efficiency of administration. However, the *82nd Amendment Act* of 2000 provides for making of any provision in favour of the SCs and STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to the public services of the Centre and the states.
3. ***National Commissions for SCs and STs:*** The President should set up a National Commission for the SCs to investigate all matters relating to the constitutional safeguards for the SCs and to report to him/her (Article 338). Similarly, the President should also set up a National Commission for the STs to investigate all matters relating to the Constitutional safeguards for the STs and to report to him/her (Article 338-A). The President should place all such reports before the Parliament, along with the action taken memorandum. Previously, the Constitution provided for a combined National Commission for SCs and STs. The *89th Amendment Act* of 2003

[2]The 102nd Amendment Act of 2018 inserted a new Article 342A in the constitution. Later, this Article (342A) was amended by the 105th Amendment Act of 2021.

[3]The 8th *Amendment Act* of 1959 extended the period of ten years to twenty years, the 23rd *Amendment Act* of 1969 to thirty years, the 45th *Amendment Act* of 1980 to forty years, the 62nd *Amendment Act* of 1989 to fifty years, the 79th *Amendment Act* of 1999 to sixty years, the 95th *Amendment Act* of 2009 to seventy years and the 104th *Amendment Act* of 2019 to eighty years, that is, until the year 2030.

bifurcated the combined commission into two separate bodies.

4. ***Control of the Union over the Administration of Scheduled Areas and the Welfare of STs:*** The President is required to appoint a commission to report on the administration of the scheduled areas and the welfare of the STs in the states. He can appoint such a commission at any time but compulsorily after ten years of the commencement of the Constitution. Hence, a commission was appointed in the year 1960. It was headed by U.N. Dhebar and submitted its report in 1961. After four decades, the second commission was appointed in 2002 under the chairmanship of Dilip Singh Bhuria. It submitted its report in 2004.

Further, the executive power of the Centre extends to the giving of directions to a state with respect to the drawing up and execution of schemes for the welfare of the STs in the state.

SPECIAL PROVISIONS FOR BCs

1. ***National Commission for BCs:*** The National Commission for BCs was set-up in 1993 by an Act of Parliament. Later, the 102nd Amendment Act of 2018 conferred a constitutional status on the commission. For this purpose, the amendment inserted a new Article 338-B in the constitution. Accordingly, the President should set-up a National Commission for the socially and educationally BCs to investigate all matters relating to the constitutional safeguards for the socially and educationally BCs and to report to him/her. The President should place all such reports before the Parliament, along with the action taken memorandum.
2. ***Appointment of a Commission to Investigate the Conditions of BCs:*** The President may appoint a commission to investigate the conditions of socially and educationally backward classes and to recommend the steps to improve their condition. The report of the commission is to be placed before the Parliament, along with action taken memorandum.

Under the above provision, the President has appointed two commissions so far. The first backward classes commission was appointed in 1953 under the chairmanship of Kaka Kalelkar. It submitted its report in 1955. But, no action was taken on it as the recommendations were considered to be too vague and impractical and also there was a sharp division among the members on the criterion of backwardness.

The second Backward Classes Commission was appointed in 1979 with B.P. Mandal as chairman. It submitted its report in 1980. Its recommendations were also lying unattended till 1990 when the V.P. Singh Government declared reservation of 27 percent government jobs for the OBCs.

SPECIAL PROVISIONS FOR ANGLO-INDIANS

1. ***Special Representation for Anglo-Indians in Legislatures:*** Before 2020, the President nominated two members from the Anglo-Indian community to the Lok Sabha, if the community was not adequately represented. Similarly, before 2020, the governor of a state also nominated one member from the Anglo-Indian community to the State Legislature Assembly, if the community was not adequately represented.

Originally, this provision of special representation was to operate for ten years (i.e., upto 1960) only. But, this duration has been extended continuously since then by ten years each time. The last extension upto 2020 was made by the 95th Amendment Act, 2009. However, the 104th Amendment Act, 2019, has not extended further the operation of this provision. In other

words, the Amendment discontinued this provision of special representation of the Anglo-Indian community in the Legislatures (Lok Sabha and Assembly) by nomination. Consequently, this provision ceased to have effect on the 25th January, 2020.

2. ***Special Provision in Services and Educational Grants for Anglo-Indians:*** Before independence, certain posts were reserved for the Anglo-Indians in the railway, customs, postal and telegraph services of the Union. Similarly, the Anglo-Indian educational institutions were given certain special grants by the Centre and the states. Both these benefits were allowed to continue under the constitution on a progressive diminution basis and finally came to an end in 1960.
3. ***National Commission for SCs vis-a-vis Anglo-Indians:*** The National Commission for SCs is also required to discharge similar functions with regard to the Anglo-Indian community as it does with respect to the SCs. In other words, the commission has to investigate all matters relating to the Constitutional and other legal safeguards for the Anglo-Indian community and report to the President upon their working.[4]

[4]Clause 10 of Article 338 reads as follows: "In this article, reference to the Scheduled Castes shall be construed as including references to the Anglo-Indian community".

Table 76.1 Articles Related to Special Provisions for Certain Classes at a Glance

Article No.	Subject-matter
330	Reservation of seats for scheduled castes and scheduled tribes in the House of the people
331	Representation of the Anglo-Indian community in the House of the people
332	Reservation of seats for scheduled castes and scheduled tribes in the legislative assemblies of the states
333	Representation of the Anglo-Indian community in the legislative assemblies of the states
334	Reservation of seats and special representation to cease after certain period
335	Claims of scheduled castes and scheduled tribes to services and posts
336	Special provision for Anglo-Indian community in certain services
337	Special provision with respect to educational grants for the benefit of Anglo-Indian community.
338	National Commission for scheduled castes
338A	National Commission for scheduled tribes
338B	National Commission for backward classes
339	Control of the Union over the administration of scheduled areas and the welfare of scheduled tribes
340	Appointment of a commission to investigate the conditions of backward classes
341	Scheduled castes
342	Scheduled tribes
342A	Socially and educationally backward classes

CHAPTER 77 Special Provisions for Some States

Articles 371 to 371-J in Part XXI of the constitution contain special provisions for twelve states[1] viz., Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunachal Pradesh, Goa and Karnataka. The intention behind them is to meet the aspirations of the people of backward regions of the states or to protect the cultural and economic interests of the tribal people of the states or to deal with the disturbed law and order condition in some parts of the states or to protect the interests of the local people of the states.

Originally, the constitution did not make any special provisions for these states. They have been incorporated by the various subsequent amendments made in the context of reorganisation of the states or conferment of statehood on the Union Territories.

PROVISIONS FOR MAHARASHTRA AND GUJARAT

Under Article 371, the President is authorised to provide that the Governor of Maharashtra and that of Gujarat would have special responsibility for[2]:

1. the establishment of separate development boards for (i) Vidarbha, Marathwada and the rest of Maharashtra, (ii) Saurashtra, Kutch and the rest of Gujarat;
2. making a provision that a report on the working of these boards would be placed every year before the State Legislative Assembly;
3. the equitable allocation of funds for developmental expenditure over the above-mentioned areas; and
4. an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate employment opportunities in the state services in respect of the above-mentioned areas.

PROVISIONS FOR NAGALAND

Article 371-A makes the following special provisions for Nagaland[3]:

1. The Acts of Parliament relating to the following matters would not apply to Nagaland unless the State Legislative Assembly so decides:
   - (i) religious or social practices of the Nagas;
   - (ii) Naga customary law and procedure;
   - (iii) administration of civil and criminal justice involving decisions according to Naga customary law; and
   - (iv) ownership and transfer of land and its resources.
2. The Governor of Nagaland shall have special responsibility for law and order in

[1] Part XXI is entitled as 'Temporary, Transitional and Special Provisions'.

[2] This Article was amended by the 7th Constitutional Amendment Act of 1956 and the Bombay Reorganisation Act of 1960. Andhra Pradesh was taken out of this Article by the 32nd Constitutional Amendment Act of 1973 and provided for separately in two new Articles 371-D and 371-E.

[3] This Article was added by the 13th Constitutional Amendment Act of 1962.

the state so long as internal disturbances caused by the hostile Nagas continue. In the discharge of this responsibility, the Governor, after consulting the Council of Ministers, exercises his/her individual judgement and his/her decision is final[4]. This special responsibility of the Governor shall cease when the President so directs.

3. The Governor has to ensure that the money provided by the Central Government for any specific purpose is included in the demand for a grant relating to that purpose and not in any other demand moved in the State Legislative Assembly.
4. A regional council consisting of 35 members should be established for the Tuensang district of the state. The Governor should make rules for the composition of the council, manner of choosing its members[5], their qualifications, term, salaries and allowances; the procedure and conduct of business of the council; the appointment of officers and staff of the council and their service conditions; and any other matter relating to the constitution and proper functioning of the council.
5. For a period of ten years from the formation of Nagaland or for such further period as the Governor may specify on the recommendation of the regional council, the following provisions would be operative for the Tuensang district:
   (i) The administration of the Tuensang district shall be carried on by the Governor.
   (ii) The Governor shall in his/her discretion arrange for equitable distribution of money provided by the Centre between Tuensang district and the rest of Nagaland.
   (iii) Any Act of Nagaland Legislature shall not apply to Tuensang district unless the Governor so directs on the recommendation of the regional council.
   (iv) The Governor can make Regulations for the peace, progress and good government of the Tuensang district. Any such Regulation may repeal or amend an Act of Parliament or any other law applicable to that district.
   (v) There shall be a Minister for Tuensang affairs in the State Council of Ministers. He/she is to be appointed from amongst the members representing Tuensang district in the Nagaland Legislative Assembly.
   (vi) The final decision on all matters relating to Tuensang district shall be made by the Governor in his/her discretion.
   (vii) Members in the Nagaland Legislative Assembly from the Tuensang district are not elected directly by the people but by the regional council.

[4]The validity of anything done by the Governor shall not be called in question on the ground that he/she ought or ought not to have acted in the exercise of his/her individual judgement.

[5]The Deputy Commissioner of the Tuensang district shall be the ex-officio Chairman of the regional council and the Vice-Chairman shall be elected by the members of the council from amongst themselves.

PROVISIONS FOR ASSAM AND MANIPUR

Assam

Under Article 371-B[6], the President is empowered to provide for the creation of a committee of the Assam Legislative Assembly consisting of the members elected from the Tribal Areas of the state and such other members as he/she may specify[7].

[6]This Article was added by the 22nd Constitutional Amendment Act of 1969.

[7]The Tribal Areas of Assam are specified in the Sixth Schedule of the Constitution. They are North Cachar Hills District, Karbi Anglong District and Bodoland Territorial Areas District.

Manipur

Article 371-C makes the following special provisions for Manipur[8]:

1. The President is authorized to provide for the creation of a committee of the Manipur Legislative Assembly consisting of the members elected from the Hill Areas of the state[9].
2. The President can also direct that the Governor shall have special responsibility to secure the proper functioning of that committee.
3. The Governor should submit an annual report to the President regarding the administration of the Hill Areas.
4. The Central Government can give directions to the State Government as to the administration of the Hill Areas.

PROVISIONS FOR ANDHRA PRADESH OR TELANGANA

Articles 371-D and 371-E contain the special provisions for Andhra Pradesh[10]. In 2014, Article 371-D has also been extended to the state of Telangana by the Andhra Pradesh Reorganisation Act of 2014. Under Article 371-D, the following are mentioned:

1. The President is empowered to provide for equitable opportunities and facilities for the people belonging to different parts of the state in the matter of public employment and education and different provisions can be made for various parts of the state.
2. For the above purpose, the President may require the State Government to organise civil posts in local cadres for different parts of the state and provide for direct recruitment to posts in any local cadre. He/she may specify parts of the state which shall be regarded as the local area for admission to any educational institution. He/she may also specify the extent and manner of preference or reservation given in the matter of direct recruitment to posts in any such cadre or admission to any such educational institution.
3. The President may provide for the establishment of an Administrative Tribunal in the state to deal with certain disputes and grievances relating to appointment, allotment or promotion to civil posts in the state[11]. The tribunal is to function outside the purview of the state High Court. No court (other than the Supreme Court) is to exercise any jurisdiction in respect of any matter subject to the jurisdiction of the tribunal. The President may abolish the tribunal when he/she is satisfied that its continued existence is not necessary.

Article 371-E empowers the Parliament to provide for the establishment of a Central University in the state of Andhra Pradesh.

PROVISIONS FOR SIKKIM

The 36th Constitutional Amendment Act of 1975 made Sikkim a full-fledged state of the Indian Union. It included a new Article 371-F containing special provisions with respect to Sikkim. These are as follows:

1. The Sikkim Legislative Assembly is to consist of not less than 30 members.
2. One seat is allotted to Sikkim in the Lok Sabha and Sikkim forms one Parliamentary constituency.
3. For the purpose of protecting the rights and interests of the different sections of the Sikkim population, the Parliament is empowered to provide for the:
   (i) number of seats in the Sikkim Legislative Assembly which may be filled by candidates belonging to such sections; and

[8]This Article was added by the 27th Constitutional Amendment Act of 1971.

[9]In this Article, the expression 'Hill Areas' means such areas as the President may, by order, declare to be Hill Areas.

[10]Both the Articles were added by the 32nd Constitutional Amendment Act of 1973.

[11]The tribunal has been set up by the Andhra Pradesh Administrative Tribunal Order, 1975.

(ii) delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to the Assembly.

4. The Governor shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of the different sections of the Sikkim population. In the discharge of this responsibility, the Governor shall act in his/her discretion, subject to the directions issued by the President.
5. The President can extend (with restrictions or modifications) to Sikkim any law which is in force in a state of the Indian Union.

PROVISIONS FOR MIZORAM

Article 371-G specifies the following special provisions for Mizoram[12]:

1. The Acts of Parliament relating to the following matters would not apply to Mizoram unless the State Legislative Assembly so decides:
   (i) religious or social practices of the Mizos;
   (ii) Mizo customary law and procedure;
   (iii) administration of civil and criminal justice involving decisions according to Mizo customary law; and
   (iv) ownership and transfer of land.
2. The Mizoram Legislative Assembly is to consist of not less than 40 members.

PROVISIONS FOR ARUNACHAL PRADESH AND GOA

Arunachal Pradesh

Under Article 371-H, the following special provisions are made for Arunachal Pradesh[13]:

1. The Governor of Arunachal Pradesh shall have special responsibility for law and order in the state. In the discharge of this responsibility, the Governor, after consulting the Council of Ministers, exercises his/her individual judgement and his/her decision is final. This special responsibility of the Governor shall cease when the President so directs.
2. The Arunachal Pradesh Legislative Assembly is to consist of not less than 30 members.

Goa

Article 371-I provides that the Goa Legislative Assembly is to consist of not less than 30 members[14].

PROVISIONS FOR KARNATAKA

Under Article 371-J, the President is empowered to provide that the Governor of Karnataka would have special responsibility for

1. The establishment of a separate development board for Hyderabad-Karnataka region[15]
2. Making a provision that a report on the working of the board would be placed every year before the State Legislative Assembly
3. The equitable allocation of funds for developmental expenditure over the region
4. The reservation of seats in educational and vocational training institutions in the region for students who belong to the region
5. The reservation in state government posts in the region for persons who belong to the region

Article 371-J (which provided for special provisions for the Hyderabad-Karnataka region of the state of Karnataka) was inserted in the Constitution by the *98th Constitutional Amendment Act* of 2012. The special

[12]This Article was added by the 53rd Constitutional Amendment Act of 1986.

[13]This Article was added by the 55th Constitutional Amendment Act of 1986.

[14]This Article was added by the 56th Constitutional Amendment Act of 1987.

[15]The Hyderabad – Karnataka region includes the six backward districts of Northern Karnataka, viz., Gulbarga, Bidar, Raichur, Koppal, Yadgir and Bellary.

provisions aim to establish an institutional mechanism for equitable allocation of funds to meet the development needs over the region, as well as to enhance human resources and promote employment from the region by providing for local cadres in service and reservation in educational and vocational training institutions.

In 2010, the Legislative Assembly as well as the Legislative Council of Karnataka passed separate resolutions seeking special provisions for the Hyderabad-Karnataka region of the state of Karnataka. The government of Karnataka also endorsed the need for special provisions for the region. The resolutions sought to accelerate development of the most backward region of the state and promote inclusive growth with a view to reducing inter-district and inter-regional disparities in the state.

Table 77.1 Articles Related to Special Provisions for some States at a Glance

Article No.	Subject-matter
371.	Special provision with respect to the states of Maharashtra and Gujarat
371A.	Special provision with respect to the state of Nagaland
371B.	Special provision with respect to the state of Assam
371C.	Special provision with respect to the state of Manipur
371D.	Special provisions with respect to the state of Andhra Pradesh or the state of Telangana
371E.	Establishment of Central University in Andhra Pradesh
371F.	Special provisions with respect to the state of Sikkim
371G.	Special provision with respect to the state of Mizoram
371H.	Special provision with respect to the state of Arunachal Pradesh
371-I.	Special provision with respect to the state of Goa
371J.	Special provisions with respect to the state of Karnataka

PART X Political Dynamics

In this Part...

CHAPTER 78 Political Parties

MEANING AND TYPES

Political parties are voluntary associations or organised groups of individuals who share the same political views and who try to gain political power through constitutional means and who desire to work for promoting the national interest. There are four types of political parties in the modern democratic states, viz., (i) reactionary parties which cling to the old socio-economic and political institutions; (ii) conservative parties which believe in the status-quo; (iii) liberal parties which aim at reforming the existing institutions; and (iv) radical parties which aim at establishing a new order by overthrowing the existing institutions. In their classification of political parties on the basis of ideologies, the political scientists have placed the radical parties on the left and the liberal parties in the centre and reactionary and conservative parties on the right. In other words, they are described as the leftist parties, centrist parties and the rightist parties. In India, the CPI and CPM are the examples of leftist parties, the Congress of centrist parties and the BJP is an example of rightist parties.

There are three kinds of party systems in the world, viz., (i) one party system in which only one ruling party exists and no opposition is permitted, as for example, in the former communist countries like the USSR and other East European countries; (ii) two-party system in which two major parties exists, as for example, in USA and Britain[1]; and (iii) multi-party system in which there are a number of political parties, as for example, in France, Switzerland and Italy.

PARTY SYSTEM IN INDIA

The Indian party system has the following characteristic features:

Multi-Party System

The continental size of the country, the diversified character of Indian society, the adoption

[1]The two parties in the US are Democratic and Republican, and in Britain are Conservative and Labour.

of universal adult franchise, the peculiar type of political process, and other factors have given rise to a large number of political parties. In fact, India has the largest number of political parties in the world. Further, India has all categories of parties—left parties, centrist parties, right parties, communal parties, non-communal parties and so on. Consequently, the hung Parliaments, hung assemblies and coalition governments have become a common phenomena.

One-Dominant Party System

In spite of the multi-party system, the political scene in India was dominated for a long period by the Congress. Hence, Rajni Kothari, an eminent political analyst, preferred to call the Indian party system as 'one party dominance system' or the 'Congress system'[2]. The dominant position enjoyed by the Congress has been declining since 1967 with the rise of regional parties and other national parties like Janata (1977), Janata Dal (1989) and the BJP (1991) leading to the development of a competitive multi-party system.

Lack of Clear Ideology

Except the BJP and the two communist parties (CPI and CPM), all other parties do not have a clear-cut ideology. They (i.e., all other parties) are ideologically closer to each other. They have a close resemblance in their policies and programmes. Almost every party advocates democracy, secularism, socialism and Gandhism. More than this, every party, including the so-called ideological parties, is guided by only one consideration—power capture. Thus, politics has become issue-based rather than the ideology and pragmatism has replaced the commitment to the principles.

[2]Rajni Kothari: Congress System in India, Asian Survey, Volume 4, No. 12 (December, 1964), pp. 1–18.

Personality Cult

Quite often, the parties are organised around an eminent leader who becomes more important than the party and its ideology. Parties are known by their leaders rather than by their manifesto. Hence, it is said that "there are political personalities rather than political parties in India".

Based on Traditional Factors

In the western countries, the political parties are formed on the basis of socio-economic and political programme. On the other hand, a large number of parties in India are formed on the basis of religion, caste, language, culture, race and so on. These parties generally work for the promotion of communal and sectional interests and thereby undermine the general public interest.

Emergence of Regional Parties

Another significant feature of the Indian party system is the emergence of a large number of regional parties and their growing role. They have become the ruling parties in various states. In the beginning, they were confined to the regional politics only. But, of late, they have come to play a significant role in the national politics due to coalition governments at the Centre.

Factions and Defections

Factionalism, defections, splits, mergers, fragmentation, polarisation and so on have been an important aspect of the functioning of political parties in India. Lust for power and material considerations have made the politicians to leave their party and join another party or start a new party. The practice of defections gained greater currency after the fourth general elections (1967). This phenomenon caused political instability both at the Centre and in the states and led to disintegration of the parties.

Lack of Effective Opposition

An effective Opposition is very essential for the successful operation of the parliamentary democracy prevalent in India. It checks the autocratic tendencies of the ruling party and provides an alternative government. However, since the first general elections, an effective, strong, organised and viable national Opposition could never emerge except in flashes. The Opposition parties have no unity and very often adopt mutually conflicting positions with respect to the ruling party. They have failed to play a constructive role in the functioning of the body politic and in the process of nation building.

The formation of various political parties (in the chronological order) is given in Table 78.1.

RECOGNITION OF NATIONAL AND STATE PARTIES

The Election Commission registers political parties for the purpose of elections and grants them recognition as national or state parties on the basis of their poll performance. The other parties are simply declared as *registered-unrecognised* parties.

The recognition granted by the Commission to the parties determines their right to certain privileges like allocation of the party symbols, provision of time for political broadcasts on the state-owned television and radio stations and access to electoral rolls.

Every national party is allotted a symbol exclusively reserved for its use throughout the country. Similarly, every state party is allotted a symbol exclusively reserved for its use in the state or states in which it is so recognised. A registered-unrecognised party, on the other hand, can select a symbol from a list of free symbols. In other words, the Commission specifies certain symbols as 'reserved symbols' which are meant for the candidates set up by the recognised parties and others as 'free symbols' which are meant for other candidates.

Conditions for Recognition as a National Party

At present, a party is recognised as a national party if any of the following conditions is fulfilled[3]:

1. If it secures six per cent of valid votes polled in any four or more states at a general election to the Lok Sabha or to the legislative assembly; and, in addition, it wins four seats in the Lok Sabha from any state or states; or
2. If it wins two per cent of seats in the Lok Sabha at a general election; and these candidates are elected from three states; or
3. If it is recognised as a state party in four states.

Conditions for Recognition as a State Party

At present, a party is recognised as a state party in a state if any of the following conditions is fulfilled[4]:

1. If it secures six per cent of the valid votes polled in the state at a general election to the legislative assembly of the state concerned; and, in addition, it wins 2 seats in the assembly of the state concerned; or
2. If it secures six per cent of the valid votes polled in the state at a general election to the Lok Sabha from the state concerned; and, in addition, it wins 1 seat in the Lok Sabha from the state concerned; or
3. If it wins three per cent of seats in the legislative assembly at a general election to the legislative assembly of the state concerned or 3 seats in the assembly, whichever is more; or
4. If it wins 1 seat in the Lok Sabha for every 25 seats or any fraction thereof allotted to the state at a general election to the Lok Sabha from the state concerned; or

[3]The Election Symbols (Reservation and Allotment) Order, 1968, as amended from time to time.
[4]*Ibid.*

5. If it secures eight per cent of the total valid votes polled in the state at a General Election to the Lok Sabha from the state or to the legislative assembly of the state.

The number of recognised parties keeps on changing on the basis of their performance in the general elections. The national parties and state parties are also known as all-India parties and regional parties respectively.

At the time of First Lok Sabha general elections (1952), there were 14 national parties[5] and 39 state parties in the country. On the eve of Seventeenth Lok Sabha general elections (2019), there were 7 national parties[6] and 52 state parties in the country.

[5]Bharatiya Jan Sangh (BJS), Bolshevik Party of India (BPI), Communist Party of India (CPI), Forward Bloc (Marxist Group) (FBL-MG), Forward Bloc (Ruikar Group) (FBL-RG), Hindu Mahasabha (HMS), Indian National Congress (INC), Krishikar Lok Party (KLP), Kisan Mazdoor Praja Party (KMPP), Revolutionary Communist Party of India (RCPI), Ram Rajya Parishad (RRP), Revolutionary Socialist Party (RSP), Scheduled Caste Federation (SCF) and Socialist Party (SP).

[6]Bahujan Samaj Party (BSP), Bharatiya Janata Party (BJP), Communist Party of India (CPI), Communist Party of India (Marxist) (CPM), Indian National Congress (INC), Nationalist Congress Party (NCP) and All India Trinamool Congress (AITC).

Table 78.1 Formation of Political Parties (Chronological Order)

Sl. No.	Name of the Party (Abbreviation)	Founder	Year of Formation
1.	Indian National Congress (INC)	A.O. Hume	1885
2.	Shiromani Akali Dal (SAD)	–	1920
3.	Communist Party of India (CPI)	M.N. Roy	1925
4.	Jammu & Kashmir National Conference (JKNC)	Sheikh Abdullah	1939
5.	Dravida Munnetra Kazhagam (DMK)	C.N. Annadurai	1949
6.	Communist Party of India (Marxist) (CPM)	–	1964
7.	Shiv Sena (SHS)	Bal Thackeray	1966
8.	All India Anna Dravida Munnetra Kazhagam (AIADMK)	M.G. Ramachandran	1972
9.	Bharatiya Janata Party (BJP)	A.B. Vajpayee and L.K. Advani	1980
10.	Telugu Desam Party (TDP)	N.T. Rama Rao	1982
11.	Bahujan Samaj Party (BSP)	Kanshi Ram	1984
12.	Asom Gana Parishad (AGP)	P.K. Mahanta	1985
13.	Samajwadi Party (SP)	Mulayam Singh Yadav	1992
14.	Rashtriya Janata Dal (RJD)	Lalu Prasad Yadav	1997
15.	Biju Janata Dal (BJD)	Naveen Patnaik	1997
16.	All India Trinamool Congress (AITC)	Mamata Banerjee	1998
17.	Jammu and Kashmir People's Democratic Party (PDP)	Mufti Mohd. Sayeed	1999
18.	Janata Dal (United) (JD (U))	Sharad Yadav	1999
19.	Janata Dal (Secular) (JD(S))	H.D. Deve Gowda	1999
20.	Nationalist Congress Party (NCP)	Sharad Pawar, P.A. Sangma and Tariq Anwar	1999
21.	Lok Janshakti Party (LJP)	Ram Vilas Paswan	2000
22.	Telangana Rashtra Samithi (TRS) (Now, Bharat Rashtra Samithi) (BRS)	K. Chandra Shekar Rao	2001
23.	Yuvajana Sramika Rythu Congress Party (YSRCP)	Y.S. Jagan Mohan Reddy	2011
24.	Aam Aadmi Party (AAP)	Arvind Kejriwal	2012
25.	National People's Party (NPP)	P.A. Sangma	2013

CHAPTER 79 Role of Regional Parties

The presence of a large number of regional parties is an important feature of the Indian Political System. They have come to play a vital role in Indian politics at all levels, i.e. local, state and national. This is more so in the context of the new era of coalition politics.

FEATURES

Following are the features of a regional party:

1. It generally operates within a particular state or specific region. Its electoral base is limited to a single region.
2. It articulates regional interests and identifies itself with a particular cultural, religious, linguistic or ethnic group.
3. It is primarily concerned with exploiting the local resources of discontent or preserving a variety of primordial demands based on language, caste or community or region[1].
4. It focuses on local or regional issues and aims to capture political power at the state level.
5. It has a political desire for greater regional autonomy of states in the Indian Union[2].

[1]Observation made by Stanley A. Kochnock in Ram Reddy, G. and Sharma, B.A.V., *Regionalism in India - A Study of Telangana*, Concept Publishers, New Delhi, 1979, pp. 87–88.

[2]Brass, P.R., *The Politics of India Since Independence*, Second Edition, Cambridge University Press, Cambridge, UK, 1993, p. 89.

CLASSIFICATION

The various regional parties in India can be classified into the following four categories:

1. Those regional parties which are based on the regional culture or ethnicity. These include Shiromani Akali Dal, National Conference, DMK, Telugu Desam, Shiv Sena, Asom Gana Parishad and so on.
2. Those regional parties which have an all-India outlook but lack a national electoral base. The examples are Samajwadi Party, Nationalist Congress Party and so on.
3. Those regional parties which have been formed by a split in national parties. For example, Biju Janata Dal, Rashtriya Janata Dal, Trinamool Congress, YSR Congress and so on.
4. Those regional parties which have been formed by individual leaders on the basis of their charismatic personality. These are called as personalised parties and they are short-lived.

RISE

There are multiple reasons for the emergence of regional parties in India. These are as follows:

1. Cultural and ethnic pluralism of the Indian society.
2. Economic disparities and regional imbalances in the development.
3. Desire of certain sections or areas to maintain separate identity due to historical factors.
4. Self-interest of the deposed Maharajas and dispossessed Zamindars.

5. Failure of national parties to meet the regional aspirations.
6. Reorganisation of states on the basis of language.
7. Charismatic personality of the regional leaders.
8. Factional fights within the larger parties.
9. Centralising tendencies of the congress party.
10. Absence of a strong opposition party at the central level.
11. Role of caste and religion in the political process.
12. Alienation and discontentment among the tribal groups.

ROLE

The following points highlight the role played by the regional parties in Indian politics:

1. They have provided better governance and a stable government at the regional level.
2. They have posed a challenge to the one-party dominant system in the country and led to a decline in the domination of the Congress party[3].
3. They have made a strong impact on the nature and course of centre-state relations. The tension areas in centre-state relations and the demand for the grant of greater autonomy made the central leadership more responsive to the needs of the regional actors[4].
4. They have made politics more competitive and popular participation in the political process more extensive at the grass roots[5].
5. They have widened the choice for voters in both the parliamentary and assembly elections. The voters can vote for that party which aims to promote the interest of their state/region.
6. They have increased the political consciousness of the people and also their interest in politics. They bring into focus the local or regional issues which immediately attract the attention of the masses.
7. They provided a check against the dictatorial tendencies of the central government. They opposed the ruling congress party at the centre on certain issues and forced the dominant party to be more reasonable in its approach to the process of conflict resolution[6].
8. They have made a significant contribution for the successful functioning of parliamentary democracy. In a parliamentary democracy, the minority must have its say, the majority must have its way, and the regional parties have played this role successfully by being ruling parties in some states and opposition parties at the centre[7].
9. They have succeeded in exposing the partisan role of the Governors in the appointment and dismissal of the Chief Minister, in issuing of ordinances and reservation of bills for the consideration of the President[8].
10. After the dawn of the era of coalition politics, the regional parties have assumed an important role in national politics. They have joined the coalition governments formed at the centre and shared power with the national parties.

DYSFUNCTIONS

However, there are also negative points in the role of regional parties. These are as follows:

1. They have given more importance to regional interests rather than national interests. They have neglected the implications and consequences of their

[3]Bombwall, K.R., Regional parties in Indian politics: A preview. In Bhatnagar, S. and Kumar, P. (Eds) *Regional Political Parties in India*, ESS Publications, Delhi, 1988, pp. 1–16.
[4]*Ibid.*
[5]*Ibid.*
[6]Siwach, J.R., *Dynamics of Indian Government and Politics*, Second Edition, Sterling Publishers Private Limited, New Delhi, 1990, p. 865.
[7]*Ibid.*
[8]*Ibid.*

narrow approach to the resolution of national issues.

2. They have encouraged regionalism, casteism, linguism, communalism and tribalism which have become hurdles to national integration.
3. They are responsible for the unresolution of the inter-state water disputes, inter-state border disputes and other inter-state issues.
4. They have also indulged in corruption, nepotism, favouritism and other forms of misutilisation of power in order to promote their self-interest.
5. They have focused more on the populist schemes and measures to expand and strengthen their electoral base. This has adversely affected the state economy and development.
6. They bring in regional factors in the decision-making and the policy-making by the coalition government at the centre. They force the central leadership to yield to their demands.

CHAPTER 80 Elections

ELECTORAL SYSTEM

Articles 324 to 329 in Part XV of the Constitution make the following provisions with regard to the electoral system in our country:

1. The Constitution (Article 324) provides for an independent Election Commission in order to ensure free and fair elections in the country. The power of superintendence, direction and conduct of elections to the Parliament, the state legislatures, the office of the President and the office of the Vice-President is vested in the Commission[1].
2. There is to be only one general electoral roll for every territorial constituency for election to the Parliament and the state legislatures. Thus, the Constitution has abolished the system of communal representation and separate electorates which led to the partition of the country.
3. No person is to be ineligible for inclusion in the electoral roll on grounds only of religion, race, caste, sex or any of them. Further, no person can claim to be included in any special electoral roll for any constituency on grounds only of religion, race, caste or sex or any of them. Thus, the Constitution has accorded equality to every citizen in the matter of electoral franchise.
4. The elections to the Lok Sabha and the state assemblies are to be on the basis of adult franchise. Thus, every person who is a citizen of India and who is 18[2] years of age, is entitled to vote at the election provided he/she is not disqualified under the provisions of the Constitution or any law made by the appropriate legislature (Parliament or state legislature) on the ground of non-residence, unsound mind, crime or corrupt or illegal practice.
5. Parliament may make provision with respect to all matters relating to elections to the Parliament and the state legislatures including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing their due constitution.
6. The state legislatures can also make provision with respect to all matters relating to elections to the state legislatures including the preparation of electoral rolls and all other matters necessary for securing their due constitution. But, they can make provision for only those matters which are not covered by the Parliament. In other words, they can only supplement the parliamentary law and cannot override it.
7. The Constitution declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. Consequently, the orders issued by the Delimitation Commission become final and cannot be challenged in any court.

[1]There is a separate state election commission to deal with elections to the panchayats and municipalities in the state.

[2]The 61st Amendment Act of 1988 has reduced the voting age from 21 to 18 years. This came into force on March 28, 1989.

8. The Constitution lays down that no election to the Parliament or the state legislature is to be questioned except by an election petition presented to such authority and in such manner as provided by the appropriate legislature. Since 1966, the election petitions are triable by high courts alone. But, the appellate jurisdiction lies with the Supreme Court alone.

Article 323B empowers the appropriate legislature (Parliament or state legislature) to establish a tribunal for the adjudication of election disputes. It also provides for the exclusion of the jurisdiction of all courts (except the special leave appeal jurisdiction of the Supreme Court) in such disputes. So far, no such tribunal has been established. It must be noted here that in *Chandra Kumar* case[3] (1997), the Supreme Court declared this provision as unconstitutional. Consequently, if at any time an election tribunal is established, an appeal from its decision lies to the high court.

ELECTION MACHINERY[3a]

Election Commission of India (ECI) Under Article 324 of the Constitution of India, the Election Commission of India is vested with the power of superintendence, direction and control of conducting the elections to the Lok Sabha and State Legislative Assemblies. The Election Commission of India is a three-member body, with one Chief Election Commissioner and two Election Commissioners. The President of India appoints the Chief Election Commissioner and the Election Commissioners.

Chief Electoral Officer (CEO) The Chief Electoral Officer of a State/Union Territory is authorised to supervise the election work in the State/Union Territory subject to the overall superintendence, direction and control of the Election Commission of India. The Election Commission of India nominates or designates an officer of the Government of the State/Union Territory as the Chief Electoral Officer in consultation with that State Government/Union Territory Administration.

District Election Officer (DEO) The District Election Officer supervises the election work in a district. The Election Commission of India nominates or designates an officer of the State Government as the District Election Officer in consultation with the State Government.

Returning Officer (RO) The Returning Officer of a Parliamentary or assembly constituency is responsible for the conduct of elections in the Parliamentary or assembly constituency concerned. The Election Commission of India nominates or designates an officer of the Government or a local authority as the Returning Officer for each of the assembly and parliamentary constituencies in consultation with the State Government/Union Territory Administration.

Electoral Registration Officer (ERO) The Electoral Registration Officer is responsible for the preparation of electoral rolls for a Parliamentary/assembly constituency. The Election Commission of India, in consultation with the State/UT government, appoints an officer of the government or the local authorities as the Electoral Registration Officer.

Presiding Officer The Presiding Officer with the assistance of polling officers conducts the poll at a polling station. The District Election Officer appoints the Presiding Officers and the Polling Officers. In the case of Union Territories, such appointments are made by the Returning Officers.

Observers The Election Commission of India nominates officers of Government as Observers for Parliamentary and Assembly Constituencies. These observers are of various kinds[4]:

1. **General Observers:** The Commission deploys General Observers in adequate

[3] *L. Chandra Kumar* vs. *Union of India* (1997). Clause 3(d) of Article 323B was declared as unconstitutional.

[3a] This information is obtained from the official website of the Election Commission of India.

[4] Handbook for Media – General Elections to the 17th Lok Sabha (2019), Election Commission of India, pp. 95–96.

number to ensure smooth conduct of elections. These Observers are asked to keep a close watch on every stage of the electoral process to ensure free and fair elections.

2. **Expenditure Observers:** The Commission appoints Expenditure Observers and Assistant Expenditure Observers who will exclusively monitor the election expenditure of the contesting candidates.
3. **Police Observers:** The Commission deploys IPS officers as Police Observers at State and District levels, depending upon the sensitivity of the Constituency, wherever required. They will monitor all activities relating to force deployment, law and order situation and co-ordinate between the Civil and Police administration to ensure free and fair election.
4. **Micro Observers:** In addition to General Observers, the Commission also deploys Micro Observers to observe the poll proceedings on the poll day in critical/vulnerable polling stations. They are chosen from Central Government/Central PSUs officials. They observe the proceedings at the Polling Stations on the poll day right from the mock poll to the completion of poll and the process of sealing of EVMs and VVPATs and other documents to ensure that all instructions of the Commission are complied with by the Polling Parties and the Polling Agents. They also report to the General Observers directly about any vitiation of the poll proceedings in their allotted Polling Stations.

ELECTION PROCESS[5]

Time of Elections Elections for the Lok Sabha and every state Legislative Assembly have to take place every five years, unless called earlier. The President can dissolve Lok Sabha and call a General Election before five years is up, if the Government can no longer command the confidence of the Lok Sabha, and if there is no alternative government available to take over.

Schedule of Elections When the five-year limit is up, or the legislature has been dissolved and new elections have been called, the Election Commission puts into effect the machinery for holding an election. The Constitution states that there can be no longer than six months between the last session of the dissolved Lok Sabha and the recalling of the new House, so elections have to be concluded before then.

The Election Commission normally announces the schedule of elections in a major press conference a few weeks before the formal process is set in motion. The Model Code of Conduct for guidance of candidates and political parties comes immediately into effect after such announcement.

The formal process for the elections starts with the Notification or Notifications calling upon the electorate to elect Members of a House. As soon as Notifications are issued, candidates can start filing their nominations in the constituencies from where they wish to contest. The candidates are given a week to put forward their nominations. These are scrutinised by the Returning Officers and if not found to be in order can be rejected after a summary hearing. Validly nominated candidates can withdraw within two days after nominations have been scrutinised.

Oath or Affirmation It is necessary for a candidate to make and subscribe an oath or affirmation before an officer authorised by the Election Commission. For any particular election, the authorised persons are, principally, the Returning Officer and the Assistant Returning Officer for the constituency. The candidate, in person, is required to make the oath or affirmation immediately after presenting his/her nomination papers and in any case not later than the day previous to the date of the scrutiny[6].

Election Campaign and Model Code The campaign is the period when the political

[5]This information is downloaded from the official website of the Election Commission of India.

[6]General Elections 2009: Reference Handbook, Press Information Bureau, Government of India, p. 189.

parties put forward their candidates and arguments with which they hope to persuade people to vote for their candidates and parties. The official campaign lasts at least two weeks from the drawing up of the list of nominated candidates, and officially ends 48 hours before polling closes.

During the election campaign, the political parties and contesting candidates are expected to abide by a Model Code of Conduct[7] evolved by the Election Commission on the basis of a consensus among political parties. The model code lays down broad guidelines as to how the political parties and candidates should conduct themselves during the election campaign. It is intended to maintain the election campaign on healthy lines, avoid clashes and conflicts between political parties or their supporters and to ensure peace and order during the campaign period and thereafter, until the results are declared. The model code also prescribes guidelines for the ruling party either at the Centre or in the state to ensure that a level field is maintained and that no cause is given for any complaint that the ruling party has used its official position for the purposes of its election campaign.

Once an election has been called, parties issue manifestos detailing the programmes they wish to implement if elected to government, the strengths of their leaders, and the failures of opposing parties and their leaders. Rallies and meetings where the candidates try to persuade, cajole and enthuse supporters, and denigrate opponents, are held throughout the constituencies.

Polling Days Polling is normally held on a number of different days in different constituencies, to enable the security forces and those monitoring the election to keep law and order and ensure that voting during the election is fair.

[7]The Model Code of Conduct was agreed to by all the political parties in 1968. The Election Commission first effectively put to use the Model Code of Conduct in the year 1991 to ensure fair elections and a level playing field.

Ballot Papers and Symbols After nomination of candidates is complete, a list of competing candidates is prepared by the Returning Officer, and ballot papers are printed. Ballot papers are printed with the names of the candidates (in languages set by the Election Commission) and the symbols allotted to each of the candidates. Candidates of recognised parties are allotted their party symbols.

Since 1998, the Commission has increasingly used Electronic Voting Machines (EMVs) instead of ballot boxes. In 2003, all state elections and by elections were held using EVMs. Encouraged by this, the Commission took a historic decision to use only EVMs for the Lok Sabha election in 2004. More than 1 million EVMs were used in this election.

Electronic Voting Machine An Electronic Voting Machine (EVM) is a simple electronic device used to record votes in place of ballot papers and boxes which were used earlier in conventional voting system. The advantages of the EVM over the traditional ballot paper/ ballot box system are given here:

(i) It eliminates the possibility of invalid and doubtful votes which, in many cases, are the root causes of controversies and election petitions.

(ii) It makes the process of counting of votes much faster than the conventional system.

(iii) It reduces to a great extent the quantity of paper used thus saving a large number of trees making the process eco-friendly.

(iv) It reduces cost of printing (almost nil) as only one sheet of ballot paper is required for each Polling Station[8].

Voting Procedure Voting is by secret ballot. Polling stations are usually set up in public institutions, such as schools and community halls. To enable as many electors as

[8]General Elections 2009: Reference Handbook, Press Information Bureau, Government of India, p. 181.

possible to vote, the officials of the Election Commission try to ensure that there is a polling station within two kilometres of every voter, and that no polling stations should have to deal with more than 1200 voters. Each polling station is open for at least eight hours on the day of the election.

On entering the polling station, the elector is checked against the electoral roll[9], and identity document is verified, indelible ink is applied on the left forefinger and a voter slip is issued and the voter is allowed to cast his/her vote by activating the ballot button in the control unit by the presiding officer.

Supervising Elections The Election Commission appoints a large number of Observers to ensure that the campaign is conducted fairly, and that people are free to vote as they choose. Election expenditure Observers keeps a check on the amount that each candidate and party spends on the election.

Media Coverage In order to bring as much transparency as possible to the electoral process, the media are encouraged and provided with facilities to cover the election, although subject to maintaining the secrecy of the vote. Media persons are given special passes to enter polling stations to cover the poll process and the counting halls during the actual counting of votes.

Media are also free to conduct opinion polls. The Election Commission has stipulated that the results of opinion polls cannot be published between two days before the start of polling and after the close of poll in any of the constituencies. Similarly, the results of exit polls can only be published after half an hour of the end of polling hours on the last day of poll.

Counting of Votes After the polling has finished, the votes cast in the EVM are counted under the supervision of Returning Officers and Observers appointed by the Election Commission. After the counting of votes is over, the Returning Officer declares the name of the candidate, to whom the largest number of votes have been given, as the winner and as having been returned by the constituency to the concerned House.

Elections to the Lok Sabha are carried out using a first-past-the-post electoral system. The country is split up into separate geographical areas, known as constituencies, and the electors can cast one vote each for a candidate, the winner being the candidate who gets the maximum votes.

Elections to the State Assemblies are carried out in the same manner as for the Lok Sabha election, with the states and union territories divided into single-member constituencies, and the first-past-the-post electoral system used.

The Election Commission compiles the complete list of members elected and issues an appropriate Notification for the due constitution of the House. With this, the process of elections is complete and the President, in case of the Lok Sabha, and the Governors of the concerned states, in case of State Assemblies, can then convene their respective Houses to hold their sessions.

Election Petitions Any elector or candidate can file an election petition if he or she thinks there has been malpractice during the election. An election petition is not an ordinary civil suit, but treated as a contest in which the whole constituency is involved. Election petitions are tried by the High Court of the state involved, and if upheld can even lead to the restaging of the election in that constituency.

Till now, seventeen general elections have been held to the Lok Sabha. The results of these elections are summarised in Table 80.1.

[9]The electoral roll is a list of all people in the constituency who are registered to vote in Indian elections. Only those people with their names on the electoral roll are allowed to vote. The electoral roll is normally revised every year to add the names of those who are to turn 18 on the 1st January of that year or have moved into a constituency and to remove the names of those who have died or moved out of a constituency.

Table 80.1 Results of Lok Sabha Elections

General Elections (Year)	Elective Seats	Seats won by Parties*
First (1952)	489	Congress 364, Communist 16, Socialist 12, KMPP 9, Jana Sangh 3.
Second (1957)	494	Congress 371, Communist 27, Praja Socialist 19, Jana Sangh 4.
Third (1962)	494	Congress 361, Communist 29, Swatantra 18, Jana Sangh 14, Praja Socialist 12, Socialists 6.
Fourth (1967)	520	Congress 283, Swatantra 44, Jana Sangh 35, CPI 23, CPM 19, Sanyukta Socialist 23, Praja Socialist 13.
Fifth (1971)	518	Congress 352, CPM 25, CPI 24, DMK 23, Jana Sangh 21, Swatantra 7, Socialist 5.
Sixth (1977)	542	Janata 298, Congress 154, CPM 22, CPI 7, AIADMK 18.
Seventh (1980)	542	Congress 353, Janata (Secular) 41, Janata 31, CPM 36, CPI 11, DMK 16.
Eight (1984)	542	Congress 415, TDP 28, CPM 22, CPI 6, Janata 10, AIADMK 12, BJP 2.
Ninth (1989)	543	Congress 197, Janata Dal 141, BJP 86, CPM 32, CPI 12, AIADMK 11, TDP 2.
Tenth (1991)	543	Congress 232, BJP 119, Janata Dal 59, CPM 35, CPI 13, TDP 13, AIADMK 11.
Eleventh (1996)	543	BJP 161, Congress 140, Janata Dal 46, CPM 32, TMCM 20, DMK 17, SP 17, TDP 16, SS 15, CPI 12, BSP 11.
Twelfth (1998)	543	BJP 182, Congress 141, CPM 32, AIADMK 18, TDP 12, SP 20, Samata 12, RJD 17.
Thirteenth (1999)	543	BJP 182, Congress 114, CPM 33, TDP 29, SP 26, JD (U) 20, SS 15, BSP 14, DMK 12, BJD 10, AIADMK 10.
Fourteenth (2004)	543	Congress 145, BJP 138, CPM 43, SP 36, RJD 24, BSP 19, DMK 16, Shiv Sena 12, BJD 11, CPI 10.
Fifteenth (2009)	543	Congress 206, BJP 116, SP 23, BSP 21, JD(U) 20, Trinamool 19, DMK 18, CPM 16, BJD 14, Shiv Sena 11, NCP 9, AIADMK 9, TDP 6, RLD 5, CPI 4, RJD 4, SAD 4.
Sixteenth (2014)	543	BJP 282, Congress 44, AIADMK 37, Trinamool 34, BJD 20, Shiv Sena 18, TDP 16, TRS 11, CPM 9, YSR Congress 9, NCP 6, LJP 6, SP 5, AAP 4, RJD 4, SAD 4.
Seventeenth (2019)	543	BJP 303, Congress 52, DMK 23, Trinamool 22, YSR Congress 22, Shiv Sena 18, JD (U) 16, BJD 12, BSP 10, TRS 9, LJP 6, NCP 5, SP 5.

*Note: The seats won by other smaller parties and independents are not included in this Table.

Table 80.2 Articles Related to Elections at a Glance

Article No.	Subject-matter
324.	Superintendence, direction and control of elections to be vested in an Election Commission
325.	No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex
326.	Elections to the House of the People and to the Legislative Assemblies of states to be on the basis of adult suffrage
327.	Power of Parliament to make provision with respect to elections to Legislatures
328.	Power of Legislature of a state to make provision with respect to elections to such Legislature
329.	Bar to interference by courts in electoral matters
329A.	Special provision as to elections to Parliament in the case of Prime Minister and Speaker (Repealed)

CHAPTER 81 Election Laws

REPRESENTATION OF THE PEOPLE ACT, 1950

Articles 81 and 170 of the Constitution of India lay down the maximum number of seats in Parliament and in Legislative Assemblies of States and also certain principles to be followed in allocating seats in the House of People among the States and in the State Legislative Assemblies, but have left the actual allocation of such seats to be provided by the law.

Similarly, Article 171 of the Constitution of India lays down the maximum and minimum number of seats in the Legislative Council of a State, and also specify the various methods in which the seats shall be filled, but the actual number of seats to be filled by each such method has been left to be provided by law.

Therefore, the Representation of the People Act, 1950, was enacted to provide for the allocation of seats in the House of the People and in the Legislative Assemblies and Legislative Councils of States.

The Act also sought to confer on the President the powers to delimit, after consultation with the Election Commission, the various constituencies for the purpose of elections to fill seats in the House of the People and in the Legislative Assemblies and Legislative Councils of States.

The Act further provided for the registration of electors for Parliamentary Constituencies and for the Assembly and Council Constituencies, and the qualifications and disqualifications for such registration.

The Act also makes the following other provisions relating to the elections:

1. Election officers like chief electoral officers, district election officers, electoral registration officers and so on.
2. Manner of filling seats in the Council of States to be filled by representatives of union territories.
3. Local authorities for purposes of elections to the State Legislative Councils.
4. Barring the jurisdiction of civil courts.

REPRESENTATION OF THE PEOPLE ACT, 1951

The Representation of the People Act, 1950 did not contain all the provisions relating to elections but merely provided for the allocation of seats in and the delimitation of constituencies for the purpose of elections to the House of People and Legislatures of States, the qualifications of voter at such election and the preparations of electoral rolls.

The provisions for the actual conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for the membership of these Houses, the corrupt practices and other election offences, and the decision of election disputes were all left to be made in a subsequent measure. In order to provide for these provisions, the Representation of the People Act, 1951 was enacted.

Broadly speaking, this Act contains provisions relating to the following electoral matters:

1. Qualifications and disqualifications for membership of Parliament and State Legislatures
2. Notification of general elections
3. Administrative machinery for the conduct of elections
4. Registration of political parties
5. Conduct of elections: The conduct of elections include the following matters:
   - (a) Nomination of candidates
   - (b) Candidates and their agents
   - (c) General procedure at elections
   - (d) The poll
   - (e) Counting of votes
   - (f) Multiple elections
   - (g) Publication of election results and nominations
   - (h) Declaration of assets and liabilities
   - (i) Election expenses
6. Free supply of certain material to candidates of recognised political parties
7. Disputes regarding elections: The provisions of the Act with respect to disputes regarding elections are related to the following matters:
   - (i) Presentation of election petitions to High Court
   - (ii) Trial of election petitions
   - (iii) Withdrawal and abatement of election petitions
   - (iv) Appeals to Supreme Court
   - (v) Costs and security for costs
8. Corrupt practices and electoral offences
9. Powers of Election Commission in connection with inquiries as to disqualifications of members.
10. Bye-elections and time limit for filling vacancies.
11. Miscellaneous provisions relating to elections.
12. Barring the jurisdiction of civil courts.

DELIMITATION ACT, 2002

Articles 82 and 170 of the Constitution of India provide for readjustment and the division of each State into territorial constituencies (Parliamentary constituencies and Assembly constituencies) on the basis of the 2001 census by such authority and in such manner as Parliament may, by law, determine.

Further, Articles 330 and 332 of the Constitution of India provide for re-fixing the number of seats reserved for the Scheduled Castes and the Scheduled Tribes in the House of the People and Legislative Assemblies of the States on the basis of the 2001 census.

The previous delimitation of Parliamentary and Assembly constituencies is based on the 1971 census. The uneven growth of population in different constituencies in different parts of the country as well as within the same State as also continuous migration of people / electorate from one place to other especially from rural areas to urban areas have resulted in strikingly differing sizes of electoral constituencies even within the same State.

Therefore, the Delimitation Act, 2002[1], was enacted to set up a Delimitation Commission for the purpose of effecting delimitation on the basis of the 2001 census so as to correct the aforesaid distortion in the sizes of electoral constituencies.

OTHER ACTS RELATING TO ELECTIONS

1. Parliament (Prevention of Disqualification) Act, 1959 declares that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as (or for being) members of Parliament.
2. Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 provides for the inclusion in, and the exclusion from, the lists of Scheduled Castes and Scheduled Tribes, of certain castes and tribes, for the readjustment

[1]Earlier, the Delimitation Acts were enacted in 1952, 1962 and 1972.

of representation of parliamentary and assembly constituencies.

3. Government of Union Territories Act, 1963.
4. Government of National Capital Territory of Delhi Act, 1991.
5. Presidential and Vice-Presidential Elections Act, 1952 regulates certain matters relating to or connected with elections to the offices of the President and Vice-President of India.

RULES RELATING TO ELECTIONS

1. Registration of Electors Rules, 1960 provide for the preparation and publication of electoral rolls.
2. Conduct of Elections Rules, 1961 facilitates conduct of fair and free elections to the Parliament and State Legislatures.
3. Prohibition of Simultaneous Membership Rules, 1950.
4. Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985.
5. Members of Rajya Sabha (Disqualification on Ground of Defection) Rules, 1985.
6. Presidential and Vice-Presidential Elections Rules, 1974.[2]
7. Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004.
8. Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004.

ORDERS RELATING TO ELECTIONS

1. Election Symbols (Reservation and Allotment) Order, 1968 provides for the specification, reservation, choice and allotment of symbols at elections in parliamentary and assembly constituencies, for the recognition of political parties in relation thereto.
2. Registration of Political Parties (Furnishing of Additional Particulars) Order, 1992 provides for furnishing of additional particulars by associations or bodies of individual citizens of India seeking registration as a political party with the Election Commission of India.

[2]These Rules repealed the earlier Presidential and Vice-Presidential Elections Rules, 1952.

CHAPTER 82 Electoral Reforms

COMMITTEES RELATED TO ELECTORAL REFORMS

The various committees and commissions which have examined our electoral system, election machinery as well as the election process and suggested reforms are mentioned here.

1. Joint Parliamentary Committee on Amendments to Election Laws (1971–72).
2. Tarkunde Committee was appointed in 1974 by Jaya Prakash Narayan (JP) during his "Total Revolution" movement. This unofficial committee submitted its report in 1975.
3. Dinesh Goswami Committee on Electoral Reforms (1990)
4. Vohra Committee on the Nexus between Crime and Politics (1993)
5. Election Commission of India Recommendations on Electoral Reforms (1998).
6. Indrajit Gupta Committee on State Funding of Elections (1998)[1]
7. Law Commission of India 170th Report on Reform of the Electoral Laws (1999)
8. National Commission to Review the Working of the Constitution (2000–2002). It was headed by M.N. Venkatachaliah.
9. Election Commission of India Report on Proposed Electoral Reforms (2004).
10. Second Administrative Reforms Commission of India Report on Ethics in Governance (2007). It was headed by Veerappa Moily.
11. Tankha Committee (Core Committee) was appointed in 2010 to look into the whole gamut of the election laws and electoral reforms.
12. J.S. Verma Committee Report on Amendments to Criminal Law (2013).
13. Law Commission of India 244th Report on Electoral Disqualifications (2014).
14. Law Commission of India 255th Report on Electoral Reforms (2015).

Based on the recommendations made by the above Committees and Commissions, various reforms have been introduced in our electoral system, election machinery and election process. These can be studied under the following four heads.

- Electoral reforms before 1996
- Electoral reforms of 1996
- Electoral reforms after 1996
- Electoral reforms since 2010

ELECTORAL REFORMS BEFORE 1996

Lowering of Voting Age The 61st Constitutional Amendment Act of 1988 reduced the voting age from 21 years to 18 years for the Lok Sabha as well as the assembly elections. This was done in order to provide to the unrepresented youth of the country an opportunity to

[1]In 1998, the BJP-led Government appointed an eight-member committee on state funding of elections under the chairmanship of Indrajit Gupta, a former Home Minister. The committee submitted its report in 1999. It upheld the argument for introduction of state funding of elections. It stated that state funding of elections is constitutionally and legally justified and is in public interest.

express their feelings and help them become a part of political process.

Deputation to Election Commission In 1989[2], a provision was made that the officers and the staff engaged in preparation, revision and correction of electoral rolls for elections are deemed to be on deputation to the Election Commission for the period of such employment. These personnel, during that period, would be under the control, superintendence and discipline of the Election Commission.

Increase in Number of Proposers In 1989[3], the number of electors who are required to sign as proposers in nomination papers for elections to the Rajya Sabha and state legislative council has been increased to 10 per cent of the electors of the constituency or ten such electors, whichever is less. This was done in order to prevent non-serious candidates from contesting frivolously.

Electronic Voting Machines In 1989[4], a provision was made to facilitate the use of Electronic Voting Machines (EVMs) in elections. The EVMs were used for the first time in 1998 on experimental basis in selected constituencies in the elections to the Assemblies of Rajasthan, Madhya Pradesh and Delhi. The EVMs were used for the first time in the general elections (entire state) to the Assembly of Goa in 1999.

Booth Capturing In 1989[5], a provision was made for adjournment of poll or countermanding of elections in case of booth capturing. Booth capturing includes: (i) seizure of a polling station and making polling authorities surrender ballot papers or voting machines (ii) taking possession of polling station and allowing only one's own supporters to exercise their franchise (iii) threatening and preventing any elector from going to polling station and (iv) seizure of the place being used for counting of votes.

[2]*Representation of the People (Amendment) Act* of *1988, with effect from 1989.*
[3]*Ibid.*
[4]*Ibid.*
[5]*Ibid.*

Elector's Photo Identity Card (EPIC) The use of electors' photo identity cards by the Election Commission is surely making the electoral process simple, smoother and quicker. A decision was taken by the Election Commission in 1993 to issue photo identity cards to electors throughout the country to check bogus voting and impersonation of electors at elections. The electoral roll is the basis for issue of EPICs to the registered electors[6].

ELECTORAL REFORMS OF 1996

In 1990, the National Front Government headed by V.P. Singh appointed a committee on electoral reforms under the chairmanship of Dinesh Goswami, the then Law Minister. The Committee was asked to study the electoral system in detail and suggest measures for remedying the drawbacks within it. The Committee, in its report submitted in 1990 itself, made a number of proposals on electoral reforms. Some of these recommendations were implemented in 1996[7]. These are explained here.

Listing of Names of Candidates The candidates contesting elections are to be classified into three categories for the purpose of listing of their names. They are

(i) Candidates of recognised political parties
(ii) Candidates of registered-unrecognised political parties
(iii) Other (independent) candidates

Their names in the list of contesting candidates and in the ballot papers has to appear separately in the above order and in each category these have to be arranged in the alphabetical order.

Disqualification for Insulting the National Honour Act A person who is convicted for the following offences under the *Prevention of Insults to National Honour Act* of 1971 is disqualified to contest in the elections to the Parliament and state legislature for 6 years.

[6]Annual Report 2013–14, Ministry of Law and Justice, Government of India, p. 67.
[7]*Representation of the People (Amendment) Act*, 1996.

(i) Offence of insulting the National Flag
(ii) Offence of insulting the Constitution of India
(iii) Offence of preventing the singing of National Anthem

Prohibition on the Sale of Liquor No liquor or other intoxicants are to be sold or given or distributed at any shop, eating place, hotel or any other place whether public or private within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of poll.

Number of Proposers The nomination of a candidate in a Parliamentary or assembly constituency should be subscribed by 10 registered electors of the constituency as proposers, if the candidate is not sponsored by a recognised political party. In the case of a candidate sponsored by a recognised political party, only one proposer is required. This was done in order to discourage non-serious people from contesting the elections.

Death of a Candidate Earlier, in case of death of a contesting candidate before the actual polling, the election used to be countermanded. Consequently, the election process had to start all over again in the concerned constituency. But now, the election would not be countermanded on the death of a contesting candidate before the actual polling. However, if the deceased candidate belonged to a recognised political party, the party concerned would be given an option to propose another candidate within seven days.

Time Limit for By-Elections Now, by-elections are to be held within six months of occurrence of the vacancy in any House of Parliament or a state legislature. But, this condition is not applicable in two cases:

(i) Where the remainder of the term of the member whose vacancy is to be filled is less than one year; or
(ii) When the Election Commission in consultation with the Central Government, certifies that it is difficult to hold the by-elections within the said period.

Holiday to Employees on the Polling Day The registered voters employed in any trade, business, industry or any other establishment are entitled to a paid holiday on the polling day. This rule applies even to the daily wagers. However, this rule is not applicable in the case of a voter whose absence may cause danger or substantial loss in respect of the employment in which he/she is engaged.

Contestants Restricted to Two Constituencies A candidate would not be eligible to contest from more than two Parliamentary or assembly constituencies at a general election or at the by-elections which are held simultaneously. Similar restrictions are imposed for biennial elections and by-elections to the Rajya Sabha and the state legislative councils.

Prohibition of Arms Entering into the neighbourhood of a polling station with any kind of arms is to be considered a cognizable offence. But, these provisions are not applicable to the returning officer, presiding officer, any police officer or any other person appointed to maintain peace and order at the polling station.

Effective Campaigning Period Reduced The minimum gap between the last date for withdrawal of candidature and the polling date has been reduced from 20 to 14 days.

ELECTORAL REFORMS AFTER 1996

Presidential and Vice Presidential Elections In 1997[8], the number of electors as proposers and seconders for contesting election to the office of the President was increased from 10 to 50 and to the office of the Vice President from 5 to 20. Further, the amount of security deposit was increased from ₹2,500 to ₹15,000 for contesting election to both the offices of President and Vice-President to discourage frivolous candidates.

[8]*Presidential and Vice-Presidential Elections (Amendment) Act*, 1997.

Requisitioning of Staff for Election Duty In 1998[9], a provision was made whereby the employees of local authorities, nationalised banks, universities, LIC, government undertakings and other government-aided institutions can be requisitioned for deployment on election duty.

Voting through Postal Ballot In 1999[10], a provision was made for voting by certain classes of persons through postal ballot. Thus, any class of persons can be notified by the Election Commission, in consultation with the government, and the persons belonging to such notified class can give their votes by postal ballot, and not in any other manner, at elections in their constituency or constituencies.

Facility to Opt to Vote Through Proxy In 2003[11], the facility to opt to vote through proxy was provided to the service voters belonging to the Armed Forces and members belonging to a Force to which provisions of the Army Act apply. Such service voters who opt to vote through proxy have to appoint a proxy in a prescribed format and intimate the Returning Officer of the constituency.

Declaration of Criminal Antecedents, Assets, etc., by Candidates In 2003, the election Commission issued an order directing every candidate seeking election to the Parliament or a State Legislature to furnish on his/her nomination paper the information on the following matters.

(i) Whether the candidate has been convicted or acquitted or discharged in any criminal offence in the past? Whether he/she was imprisoned or fined?

(ii) Prior to six months of filing nomination, whether the candidate is accused of any pending case, of any offence punishable with imprisonment for two years or more, and in which charges were framed or cognizance was taken by a court; if so, the details thereof

(iii) The assets (immovable, movable, bank balances, etc.) of a candidate and his/her spouse and that of dependents

(iv) Liabilities, if any, particularly whether there are any dues of any public financial institution or government dues

(v) The educational qualifications of the candidate

Furnishing of any false information in the affidavit is now an electoral offence.

Changes in Rajya Sabha Elections: In 2003, the following two changes were introduced with respect to elections to the Rajya Sabha[12]:

(i) Domicile or residency requirement of a candidate contesting an election to the Rajya Sabha was removed. Prior to this, a candidate had to be an elector in the state from where he/she was to be elected. Now, it would be sufficient if he/she is an elector in any parliamentary constituency in the country.

(ii) Introducing open ballot system, instead of secret ballot system, for elections to the Rajya Sabha. This was done to curb cross-voting and to wipe out the role of money power during Rajya Sabha elections. Under the new system, an elector belonging to a political party has to show the ballot paper after marking his/her vote to a nominated agent of that political party.

Exemption of Travelling Expenditure As per a provision of 2003[13], the travelling expenditure incurred by the campaigning leaders of a political party shall be exempted from being included in the election expenses of the candidate.

Free Supply of Electoral Rolls, etc. According to a 2003 provision[14], the Government should supply, free of cost, the copies of the electoral

[9] *Representation of the People (Amendment) Act*, 1998.
[10] *Representation of the People (Amendment) Act*, 1999.
[11] *Election Laws (Amendment) Act*, 2003 and Conduct of Elections (Amendment) Rules, 2003.
[12] *Representation of the People (Amendment) Act*, 2003.
[13] *Election and Other Related Laws (Amendment) Act*, 2003.
[14] *Ibid.*

rolls and other prescribed material to the candidates of recognised political parties for the Lok Sabha and Assembly elections. Further, the Election Commission should supply specified items to the voters in the constituencies concerned or to the candidates set up by the recognised political parties.

Parties Entitled to Accept Contribution In 2003[15], the political parties were entitled to accept any amount of contribution from any person or company other than a government company. They have to report any contribution in excess of ₹20,000 to the Election Commission for making any claim to any income tax relief. Besides, the companies would get income tax exemption on the amount contributed.

Allocation of Time on Electronic Media Under a 2003 provision[16], the Election Commission should allocate equitable sharing of time on the cable television network and other electronic media during elections to display or propagate any matter or to address public. This allocation would be decided on the basis of the past performance of a recognised political party.

Introduction of Braille Signage Features in EVMs The Commission received representations from the various associations of visually impaired persons for introduction of Braille signage features in the EVMs to facilitate the visually impaired voters to cast their votes without the help of attendant. The Commission considered the proposal in detail and tried the Braille signage feature in the EVMs during the bye-election to the Asifnagar Assembly Constituency of Andhra Pradesh held in 2004. In 2008, it was tried in all the assembly constituencies of NCT of Delhi during Assembly elections.

The Commission introduced similar Braille signage features on the Electronic Voting Machines during the General Elections to the Fifteenth Lok Sabha (2009) and simultaneous Assembly elections in some States.[17]

[15] *Ibid.*

[16] *Ibid.*

[17] Election Commission of India circular dated 12th February, 2009.

ELECTORAL REFORMS SINCE 2010

Restrictions Imposed on Exit Polls According to a 2009 provision[18], conducting exit polls and publishing results of exist polls would be prohibited during the election to Lok Sabha and State Legislative Assemblies. Thus, no person shall conduct any exit poll and publish or publicise by means of the print or electronic media or disseminate in any other manner, the result of any exit poll during the period notified by the Election Commission in this regard.

"Exit-poll" is an opinion survey regarding how electors have voted at an election or how all the electors have performed with regard to the identification of a political party or candidate in an election.

Time-Limit for Submitting a Case for Disqualification In 2009[19], a provision was made for the simplification of the procedure for disqualification of a person found guilty of corrupt practices. It provided for a three-month time-limit within which the specified authority will have to submit the case of a person found guilty of corrupt practice to the President for determination of the question of disqualification.

All Officials Included in Corrupt Practice In 2009[20], a provision was made for the inclusion of all officials, whether in the government service or not, appointed or deputed by the Election Commission in connection with the conduct of elections, within the scope of corrupt practice of obtaining any assistance by a candidate for the furtherance of the prospects of his/her election.

Increase in Security Deposit In 2009[21], the amount of security deposit to be paid by the candidates contesting elections to the Lok Sabha was increased from ₹10,000 to ₹25,000 for the general candidates and from ₹5,000 to

[18] *Representation of the People (Amendment) Act*, 2009, with effect from February 1, 2010.

[19] *Ibid.*

[20] *Ibid.*

[21] *Ibid.*

₹12,500 for SC and ST candidates. Similarly, the security deposit in the case of elections to the state legislative assembly was increased from ₹5,000 to ₹10,000 for the general candidates and from ₹2,500 to ₹5,000 for the SC and ST candidates. This was done in order to check the multiplicity of non-serious candidates.

Appellate Authority within the District In 2009[22], a provision was made for appointment of an appellate authority within the district against the orders of the Electoral Registration Officers, instead of the Chief Electoral Officer of the state. Thus, an appeal against any order of the Electoral Registration Officer of a constituency (during continuous updation of the electoral roll) will now lie before the District Magistrate or Additional District Magistrate or Executive Magistrate or District Collector or an officer of equivalent rank. A further appeal against any order of the District Magistrate or Additional District Magistrate will now lie before the Chief Electoral Officer of the state.

Voting Rights to Citizens of India Living Abroad In 2010[23], a provision was made to confer voting rights to the citizens of India residing outside India due to various reasons. Accordingly, every citizen of India – (a) whose name is not included in the electoral roll (b) who has not acquired the citizenship of any other country (c) who is absent from his/her place of ordinary residence in India owing to his/her employment, education or otherwise outside India (whether temporarily or not) – shall be entitled to have his/her name registered in the electoral roll in the Parliamentary/ Assembly constituency in which his/her place of residence in India as mentioned in his/her passport is located.

Online Enrolment in the Electoral Roll In 2013, a provision was made for online filing of applications for enrolment in the electoral roll. For this purpose, the Central Government, after consulting the Election Commission, made the rules known as the Registration of the Electors (Amendment) Rules, 2013. These rules made certain amendments in the Registration of Electors Rules, 1960.

Introduction of NOTA Option[24] According to the directions of Supreme Court, the Election Commission made provision in the ballot papers/EVMs for None of the Above (NOTA) option so that the voters who come to the polling booth and decide not to vote for any of the candidates in the fray, are able to exercise their right not to vote for such candidates while maintaining the secrecy of their ballot. The provision for NOTA has been made since General Elections to State Legislative Assemblies in 2013 and continued in the General Elections to State Legislative Assemblies in 2014 along with the General Elections to the Sixteenth Lok Sabha (2014).

Even if the number of electors opting for NOTA options is more than the number of votes polled by any of the candidates, the candidate who secures the largest number of votes has to be declared elected.

Introduction of VVPAT[25] The Voter Verifiable Paper Audit Trail is an independent system attached with the EVMs that allows the voters to verify that their votes are cast as intended. When a vote is cast, a slip is printed and remains exposed through a transparent window for seven seconds, showing the serial number, name and symbol of the candidate. Thereafter, the receipt automatically gets cut and falls into the sealed dropbox of the VVPAT. The system allows a voter to challenge his/her vote on the basis of the paper receipt.

The law for using VVPATs was amended in 2013. In 2013, the Supreme Court of India had permitted the ECI to introduce VVPAT in a phased manner, calling it 'an indispensable requirement of free and fair elections'. The Court had felt that introducing VVPAT would ensure the accuracy of the voting system and

[22] *Ibid.*

[23] *Representation of the People (Amendment) Act*, 2010.

[24] Electoral Statistics: Pocket Book 2015, Election Commission of India, p. 96.

[25] India Votes: The General Elections 2014, Election Commission of India, p. 18.

also help in manual counting of votes in case of dispute. The VVPATs were first used in bye-election to the Noksen Assembly Constituency of Nagaland held in 2013.

Persons in Jail or Police Custody Can Contest Elections In 2013,[26] the Supreme Court upheld an order of the Patna High Court declaring that a person who has no right to vote by reason of being in jail or in police custody, is not an elector and is, therefore, not qualified to contest the elections to the Parliament or the State Legislature. In order to negate this order of the Supreme Court, the following two new provisions[27] have been included in the Representation of the People Act, 1951:

(i) The first provision expressly provides that by reason of the prohibition to vote (either due to in jail or in police custody), a person whose name has been entered in the electoral roll shall not cease to be an elector.

(ii) The second provision expressly provides that a Member of Parliament or the State Legislature shall be disqualified only if he/she is so disqualified under the provisions contained in the Act and on no other ground.

Consequently, the persons in jail or in police custody are allowed to contest the elections.

Immediate Disqualification of Convicted MPs and MLAs In 2013,[28] the Supreme Court held that chargesheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before.

The concerned Bench of the Court struck down as unconstitutional Section 8 (4) of the Representation of the People Act (1951) that allows convicted lawmakers a three-month period for filing appeal to the higher court and to get a stay of the conviction and sentence[29].

In order to nullify the above ruling of the Supreme Court, the Representation of the People (Second Amendment and Validation) Bill, 2013 was introduced in the Parliament. However, the Bill was later withdrawn by the Government.

Photos of Candidates on EVMs and Ballot Papers[30] According to an Election Commission order, in any election being held after May 1, 2015, the ballot papers and EVMs will carry the picture of the candidate with his or her name and party symbol to avoid confusion among the electorates in constituencies where namesakes are contesting.

The Commission has noted that there are many cases where candidates with same or similar names contest from the same constituency. Although appropriate suffixes are added to the names of candidates in the event of two or more candidates having same name, the Commission considers that additional measures are required for removing confusion in the minds of electors at the time of voting.

The Commission explained that if a candidate fails to provide the photograph, it "shall not be a ground for the rejection of the nomination of the candidate".

Ceiling on Cash Donations Lowered: In 2017 budget, the limit for anonymous cash donations by any individual to a political party has been lowered from ₹20,000 to ₹2,000. This means that now the political parties cannot receive more than ₹2,000 as cash donations. However, they are not required to inform the Election Commission of India the details of persons who donate under ₹2,000. They must keep records of persons making above ₹2,000 donations.

[26] *Chief Election Commissioner* vs. *Jan Chaukidar* (2013).

[27] Vide the Representation of the People (Amendment and Validation) Act, 2013.

[28] *Lily Thomas* vs. *Union of India* (2013).

[29] *The Hindu*, "MPs, MLAs to be disqualified on date of criminal conviction", July 10, 2013.

[30] *The Economic Times*, "Electronic Voting Machines to carry photos of candidates : CEC", September 9, 2015.

Cap on Corporate Contributions Lifted: In 2017 budget, the limit on corporate contributions from 7.5 per cent of the net profit of a company's past three financial years has been removed. This means that now a company can donate any amount of money to any political party. Further, the obligation of the company to report such donations in its profit and loss account has also been lifted.

Introduction of Electoral Bonds: In 2018, the central government notified the Electoral Bond Scheme. This scheme was announced in the 2017 budget. It is touted as an alternative to cash donations made to the political parties. It is aimed at bringing clean money and substantial transparency into the system of political funding. The salient features of the scheme are:

(i) The electoral bond means a bond issued in the nature of promissory note which is a bearer banking instrument and does not carry the name of the buyer or payee.

(ii) The electoral bonds may be purchased by a citizen of India or entities incorporated or established in India.

(iii) The electoral bonds can be used for making donations to only those registered political parties which have secured not less than one per cent of the votes polled in the last general election to the Lok Sabha or the State legislative Assembly.

(iv) The electoral bonds can be encashed by an eligible political party only through a bank account with the authorized bank.

(v) The electoral bonds are issued in the denomination of ₹1,000, ₹10,000, ₹1,00,000, ₹10,00,000 and ₹1,00,00,000.

(vi) The information furnished by the buyer is treated confidential by the authorized bank and is not to be disclosed to any authority for any purposes, except when demanded by a competent court or upon registration of criminal case by any law enforcement agency.

Foreign Funding Allowed: In 2018 budget, the receiving of foreign funds by the political parties has been allowed. In other words, the political parties can now receive funds from the foreign companies. Accordingly, the Foreign Contribution (Regulation) Act, 2010, has been amended. Under this amendment, the definition of a foreign company has been modified.

Election Laws (Amendment) Act, 2021: This Amendment Act provided for the following electoral reform:

(i) It enabled the linking of electoral roll data with the Aadhaar ecosystem in order to curb the menace of multiple enrolment of the same person in different places.

(ii) It specified the 1st January, 1st April, 1st July and 1st October in a calendar year as qualifying dates in relation to the preparation or revision of electoral rolls. Before this, only the 1st January of the year was the qualifying date in this regard.

(iii) It allowed spouses of service voters[31] to cast their vote in person or through postal ballot. To this effect, it substituted the word 'wife' with the word 'spouse' in order to make the election laws gender-neutral.

(iv) It enabled the requisition of premises that are needed for the purpose of counting, storage of voting machines (including VVPATs) and poll-related material after a poll has taken place and also for the purpose of accommodation of security forces and polling personnel. Before this, the requisition of premises was allowed for the purpose of being used as polling stations or storage of ballot boxes after a poll has taken place. In other words, this Amendment Act has expanded the grounds for the requisition of premises.

[31] Service voters include those holding a service qualification, such as members of the armed forces or central government employees posted outside India, registered in their resident constituency and their spouses living with them.

CHAPTER 83 Voting Behaviour

MEANING

Voting behaviour is also known as electoral behaviour. It is a form of political behaviour. It implies the behaviour of voters in the context of elections in a democratic political system.

Voting behaviour (or the study of voting behaviour) is defined in the following way:

Plano and Riggs: "Voting behaviour is a field of study concerned with the ways in which people tend to vote in public elections and the reasons why they vote as they do."

Gordon Marshall: "The study of voting behaviour invariably focuses on the determinants of why people vote as they do and how they arrive at the decisions they make".[1]

Oinam Kulabidhu: "Voting behaviour may be defined as the behaviour that explicitly reflects voter's choices, preferences, alternatives, ideologies, concerns, agreements, and programmes in respect of various issues, questions pertaining to the society and nation".[2]

SIGNIFICANCE

Psephology, a branch of political science, deals with the scientific study of voting behaviour. This is a new term popularised by the American political scientists and political sociologists.

The recorded history of voting goes back, at least, to the Greek Polis. The modern word for the study of voting behaviour, psephology, derives from the classical Greek 'Psephos', the piece of pottery on which certain votes, mainly about the banishment of those seen as dangerous to the state, were inscribed.[3]

The study of voting behaviour is significant for the following reasons:[4]

1. It helps in comprehending the process of political socialisation.
2. It helps in examining the internalisation of democracy as a value among the elite as well as masses.
3. It emphasises the real impact of revolutionary ballot box.
4. It enables to throw light as to how far the electoral politics continue or break with the past.
5. It helps to measure whether it is modern or primordial in the context of political development.

According to N.G.S. Kini, voting behaviour can be regarded as:

1. A mode of legitimising democratic rule;
2. Instancing "participation" in the political process involving integration into the political community;
3. Instancing an act of decision-making;

[1]Gordon Marshall, *Oxford Dictionary of Sociology*, First Indian Edition, 2004, p. 696.

[2]Oinam Kulabidhu, *Electoral Politics in Manipur*, 1980–1995 (Unpublished Ph.D. Thesis submitted to the Manipur University, 1998).

[3]David Robertson, *The Penguin Dictionary of Politics*, Second Edition, 1993, p. 485.

[4]K.R. Acharya (Ed.), *Perspectives on Indian Government and Politics*, Second Edition, 1991, S. Chand & Company Ltd., p. 403.

4. A role-action involving definite political orientation embedded in a particular type of political culture; or
5. A direct relation of the individual citizens to the formal government.

DETERMINANTS

Indian society is highly diversified in nature and composition. Hence, voting behaviour in India is determined or influenced by multiple factors. These several factors can be divided, into two broad categories, namely, socio-economic factors and political factors. These are explained below:

1. Caste: Caste is an important factor influencing the behaviour of voters. Politicisation of caste and casteism in politics has been a remarkable feature of Indian politics. Rajni Kothari, an eminent political analyst, said "Indian politics is casteist, and caste is politicised". While formulating their election strategies, the political parties always take into account the factor of caste.

Paul Brass has very-well explained the role of caste factor in the Indian voting behaviour in the following way: "At the local level, in the country side, by far the most important factor in voting behaviour remains caste solidarity. Large and important castes in a constituency tend to back either a respected member of their caste or a political party with whom their caste members identify.[5]

2. Religion: Religion is another significant factor which influences the electoral behaviour. Political parties indulge in communal propaganda and exploit the religious sentiments of the voters. The existence of various communal parties has further added to the politicisation of religion. Despite India being a secular nation, no political party ignores the influence of religion in electoral politics.

3. Language: Linguistic considerations of the people influence their voting behaviour. During elections, the political parties arouse the linguistic feelings of the people and try to influence their decision-making. The re-organisation of states (in 1956 and later) on language basis clearly reflects the significance of language factor in Indian politics. The rise of some political parties like DMK in Tamil Nadu and TDP in Andhra Pradesh can be attributed to the linguism.

4. Region: Regionalism and sub-regionalism play an important role in voting behaviour. These parochial feelings of sub-nationalism led to the emergence and perpetuation of regional parties in various states. These regional parties appeal to the electorate on the ground of regional identities and regional sentiments. Sometimes, the secessionist parties call for the boycott of elections.

5. Personality: The charismatic[6] personality of the party leader plays an important role in electoral behaviour. Thus, the towering image of Jawaharlal Nehru, Indira Gandhi, Rajiv Gandhi, Jay Prakash Narayan, Atal Bihari Vajpayee and Narendra Modi has significantly influenced the electorate to vote in favour of their parties. Similarly, at the state level also, the charismatic personality of the regional party leader has been a significant factor of popular support in the elections.

6. Money: The role of money factor cannot be overlooked in explaining the voting behaviour. Despite the limitations on the election expenditures, crores of rupees are spent on elections. The voters seek money or liquor or goods in return for their votes. In other words, 'votes' are freely exchanged for 'notes'. However, money can influence the decisions of the voters only in the normal circumstances and not in a wave election.

Paul Brass has very-well explained the meaning of a wave election in the following way: "A wave election is one in which a clear tendency begins to develop among the electorate in a single direction and in favour of a national party or its leader. It is based upon

[5]Paul R. Brass, *The Politics of India Since Independence*, Second Edition, Cambridge University Press, pp. 97–98.

[6]'Charisma' means exceptional and attractive qualities of a leader.

an issue or set of issues that transcend local calculations and coalition and draws the bulk of the uncommitted and wavering voters in the same direction as the word spreads from village to village and tea stall to tea stall".[7]

7. Performance of the Ruling Party: On the eve of elections, every political party releases its election manifesto containing the promises made by it to the electorate. The performance of the ruling party is judged by the electorate on the basis of its election manifesto. The defeat of Congress Party in 1977 elections and that of Janata Party in 1980 elections illustrates that the performance of the ruling party influences the voting behaviour. Thus, the anti-incumbency factor (which means dissatisfaction with the performance of the ruling party) is a determinant of electoral behaviour.

8. Party Identification: Personal and emotional association with political parties plays a role in determining voting behaviour. People who identify themselves with a particular party will always vote for that party irrespective of its omissions and commissions.

[7]Paul R. Brass, *The 1984 Parliamentary Elections in Uttar Pradesh*, Asian Survey, June, 1986.

9. Ideology: The political ideology professed by a political party has a bearing on the decision-making of the voters. Some people in the society are committed to certain ideologies like communism, capitalism, democracy, secularism, patriotism, decentralisation and so on. Such people generally support the candidates put up by the parties professing those ideologies.

10. Other Factors: In addition to the above-explained factors, there are also various other factors which determine the voting behaviour of the Indian electorate. These are mentioned below:

(i) Political events preceding an election like war, murder of a leader, corruption scandals, etc.
(ii) Economic conditions at the time of election like inflation, food shortage, unemployment, etc.
(iii) Factionalism – a feature of Indian politics from bottom to top levels
(iv) Candidate orientation
(v) Election campaign
(vi) Political family background
(vii) Role of media

CHAPTER 84 Coalition Government

MEANING

The term 'coalition' is derived from the Latin word 'coalitio–' which means 'to grow together'. Thus, technically, coalition means the act of uniting parts into one body or whole. Politically, coalition means an alliance of distinct political parties.

Coalition politics or coalition government has been defined in the following way:

When several political parties join hands to form a government and exercise political power on the basis of a common agreed programme/agenda, we can describe the system as coalition politics or coalition government[1].

Coalitions usually occur in modern parliaments when no single political party can muster a majority of votes. Two or more parties, who have enough elected members between them to form a majority, may then be able to agree on a common programme that does not require too many drastic compromises with their individual policies, and can proceed to form a government[2].

Coalition denotes a co-operative arrangement under which distinct political parties, or at all events members of such parties, unite to form a government or ministry[3].

Coalition is a direct descendant of the exigencies of multi-party system in a democratic set-up. It is a phenomenon of a multi-party government where a number of minority parties join hands for the purpose of running the government. A coalition is formed when many splinter groups in a House agree to join hands on a common platform by sinking their broad differences and form a majority in the House[4].

FEATURES

The features or implications of coalition politics or coalition government are very well summarised by J.C. Johari in the following way[5]:

1. Coalitions are formed for the sake of some reward, material or psychic.
2. A coalition implies the existence of at least two partners.
3. The underlying principle of a coalition system stands on the simple fact of temporary conjunction of specific interest.
4. Coalition politics is not a static but a dynamic affair as coalition players and groups dissolve and form new ones.
5. The keynote of coalition politics is compromise, and rigid dogma has no place in it.
6. A coalition government works on the basis of a minimum programme, which

[1]Ghai, K.K., *Indian Government and Politics*, Eighth Edition, Kalyani Publishers, Ludhiana, 2012, p. 508.
[2]Robertson, D., *The Penguin Dictionary of Politics*, Penguin Books, London, 1993, p. 73.
[3]Ogg, F.A., *Encyclopedia of the Social Sciences*, Vol. 2, New York, 1957, p. 600.
[4]Sahni, N.C., The theory of coalitions. In Sahni, N.C. (Ed) *Coalition Politics in India*, Jullundur, 1971, pp. 17–18.
[5]Johari, J.C., *Reflections on Indian Politics*, New Delhi, 1974, pp. 3–5.

may not be ideal for each partner of the coalition.

7. Pragmatism and not ideology is the hallmark of coalition politics. In making political adjustments, principles may have to be set aside.
8. The purpose of a coalition adjustment is to seize power.

In our country, we have seen coalitions coming up either before the elections or after the elections. The pre-poll coalition is considerably advantageous because it provides a common platform to the parties in order to woo the electorate on the basis of a joint manifesto. The post-election union is intended to enable constituents to share political power and run the government[6].

FORMATION

In the first four Lok Sabha elections (1952, 1957, 1962 and 1967), the Congress party secured the required majority to form the government at the Centre. Even though there was a split in the Congress party in 1969, the minority government of Indira Gandhi managed to continue with the outside support of the CPI, the DMK and other parties. Again, the Congress party won the 1971 elections and formed a single-party government.

However, the dominant Congress party was badly defeated in the 1977 elections. Since then, there have been a number of coalition governments at the Centre. The details are mentioned in Table 84.1.

Table 84.1 Formation of Coalition Governments at the Centre

Sl. No.	Period	Coalition	Prime Minister (Party)	Partners
1.	1977–1979	Janata Party	Morarji Desai (Congress (O))	Congress (O), Bharatiya Jana Sangh, Bharatiya Lok Dal, Socialist Party, Congress for Democracy, Chandra Shekhar Group (former congressmen) and others.
2.	1979–1980	Janata Party (Secular)	Charan Singh (Janata(S))	Janata (S) and Congress (U). Congress (I) supported from outside.
3.	1989–1990	National Front	V.P. Singh (Janata Dal)	Janata Dal, TDP, DMK, AGP and Congress (Socialist) BJP and Left parties supported from outside.
4.	1990–1991	Janata Dal (Socialist) or Samajwadi Janata Party	Chandra Shekhar (Janata Dal (S) or Samajwadi Janata Party)	Janata Dal (S) and Janata Party. Congress (I) supported from outside.
5.	1996–1997	United Front	H.D. Deve Gowda (Janata Dal)	Janata Dal, CPI, Congress (T), DMK, TDP, TMC, AGP, SP and others. Congress and CPM supported from outside.
6.	1997–1998	United Front	I.K. Gujral (Janata Dal)	Janata Dal, CPI, TMC, SP, DMK, AGP, TDP and others. Congress supported from outside.
7.	1998–1999	BJP-led Coalition	A.B. Vajpayee (BJP)	BJP, AIADMK, BJD, Shiv Sena, Lok Shakti, Arunachal Congress, Samata, Akali Dal, PMK, TRC and others. TDP and Trinamool Congress supported from outside.

[6]*The Journal of Parliamentary Information*, September 2000, XLVI(3), p. 394.

Sl. No.	Period	Coalition	Prime Minister (Party)	Partners
8.	1999–2004	National Democratic Alliance (NDA)	A.B. Vajpayee (BJP)	BJP, JD (U), Trinamool Congress, Shiv Sena, BJD, LJP, DMK, PMK, INLD, MDMK, National Conference, Akali Dal, RLD, AGP and others.
9.	2004–2009	United Progressive Alliance (UPA)	Manmohan Singh (Congress)	Congress, NCP, DMK, RJD, LJP, PMK and others. CPI and CPM supported from outside.
10.	2009–2014	United Progressive Alliance-II (UPA-II)	Manmohan Singh (Congress)	Congress, NCP, DMK, Trinamool Congress, National Conference and others.
11.	2014–2019	National Democratic Alliance (NDA)	Narendra Modi (BJP)	BJP, LJP, TDP, Shiv Sena, Akali Dal, Rashtriya Lok Samata Party, Apna Dal (S) and others. TDP left NDA in 2018.
12.	2019– till date	National Democratic Alliance (NDA)	Narendra Modi (BJP)	BJP, Akali Dal, LJP, Shiv Sena and others. Shiv Sena left NDA in 2019 and Akali Dal in 2020.

MERITS

The various advantages or strengths of the coalition governments are as follows:

1. There is an accommodation of diverse interests in the functioning of the government. A coalition government acts as a channel to meet the expectations and redress the grievances of different groups.
2. India is a highly diversified country. There are different cultures, languages, castes, religions and ethnic groups, and all these get represented in the coalition governments. This means that a coalition government is more representative in nature and it better reflects the popular opinion of the electorate. In other words, it represents a much more broader spectrum of public opinion than the single-party government.
3. A coalition government comprises different political parties having their own ideologies or agendas. But, the governmental policy requires the concurrence of all the coalition partners. Therefore, a coalition government leads to consensus-based politics. In other words, there is consensual decision-making in the coalition governments.
4. Coalition politics strengthens the federal fabric of the Indian political system. This is because a coalition government is more sensitive and responsive to the regional demands and concerns than the single-party government.
5. A coalition government reduces the tyranny of government (despotic rule). This is due to the reduced domination of a single political party in the functioning of the government. All the members of the coalition participate in the political decision-making. In short, the decisions made are more balanced.

DEMERITS

The various disadvantages or weaknesses of the coalition governments are as follows:

1. They are unstable or prone to instability. The difference of opinion among the coalition partners on policy issues leads to the collapse of the government.
2. Leadership of the Prime Minister is a principle of parliamentary form of government. This principle is curtailed

in a coalition government as the Prime Minister is required to consult the coalition partners before taking any major decision. The critics have called them as 'Super Prime Ministers' or 'Ultra Prime Ministers'.

3. The Steering Committee or the Co-ordination Committee of the coalition partners acts as the 'Super-Cabinet', and thereby it undermines the role and position of the cabinet in the functioning of the governmental machinery.
4. There is a possibility of the smaller constituents of the coalition government playing the role of a 'King-maker'. They demand more than their strength in the Parliament.
5. The leaders of regional parties bring in the regional factors in the national decision-making. They pressurise the central executive to act on their lines; otherwise, they would threaten to withdraw from the coalition.
6. The size of the Council of Ministers in a coalition government is generally quite large. This is because the ministry has to reflect all the constituents of the coalition. For example, the A.B. Vajpayee ministry of 1999 had 70-plus ministers and it was called as 'Jumbo Ministry'. This creates the problem of distribution of portfolios as well as the proper co-ordination among the members.
7. The members of coalition governments do not assume responsibility for the administrative failures and lapses. They play blame games and thereby escape from both collective responsibility as well as individual responsibility.

CHAPTER 85 Anti-Defection Law

The 52nd Amendment Act of 1985 provided for the disqualification of the members of Parliament and the state legislatures on the ground of defection from one political party to another. For this purpose, it made changes in four Articles[1] of the Constitution and added a new Schedule (the Tenth Schedule) to the Constitution. This act is often referred to as the 'anti-defection law'.

Later, the 91st Amendment Act of 2003 made one change in the provisions of the Tenth Schedule. It omitted an exception provision i.e., disqualification on the ground of defection not to apply in case of a split.

PROVISIONS OF THE ACT

The Tenth Schedule contains the following provisions with respect to the disqualification of members of Parliament and the state legislatures on the ground of defection:

1. Disqualification

Members of Political Parties: A member of a House belonging to any political party becomes disqualified for being a member of the House, (a) if he/she voluntarily gives up his/her membership of such political party; or (b) if he/she votes or abstains from voting in such House contrary to any direction issued by his/her political party without obtaining prior permission of such party and such act has not been condoned by the party within 15 days.

From the above provision it is clear that a member elected on a party ticket should continue in the party and obey the party directions.

Independent Members: An independent member of a House (elected without being set up as a candidate by any political party) becomes disqualified to remain a member of the House if he/she joins any political party after such election.

Nominated Members: A nominated member of a House becomes disqualified for being a member of the House if he/she joins any political party after the expiry of six months from the date on which he/she takes his/her seat in the House. This means that he/she may join any political party within six months of taking his/her seat in the House without inviting this disqualification.

2. Exceptions

The above disqualification on the ground of defection does not apply in the following two cases:

(a) If a member goes out of his/her party as a result of a merger of the party with another party. A merger takes place when two-thirds of the members of the party have agreed to such merger.

(b) If a member, after being elected as the presiding officer of the House, voluntarily gives up the membership of his/her

[1]These are Articles 101, 102, 190 and 191 which relate to the vacation of seats and disqualification from membership of Parliament and the state legislatures.

party or rejoins it after he/she ceases to hold that office. This exemption has been provided in view of the dignity and impartiality of this office.

It must be noted here that the provision of the Tenth Schedule pertaining to exemption from disqualification in case of split by one-third members of the legislature party has been deleted by the 91st Amendment Act of 2003. It means that the defectors have no more protection on grounds of splits.

3. Deciding Authority

Any question regarding disqualification arising out of defection is to be decided by the presiding officer of the House. Under the act, there is no time-limit for him/her to decide such a case. Originally, the act provided that the decision of the presiding officer is final and cannot be questioned in any court. However, in *Kihoto Hollohan* case[2] (1992), the Supreme Court declared this provision as unconstitutional on the ground that it seeks to take away the jurisdiction of the Supreme Court and the high courts. It held that the presiding officer, while deciding a question under the Tenth Schedule, function as a tribunal. Hence, his/her decision like that of any other tribunal, is subject to judicial review on the grounds of *mala fides*, perversity, etc. But, the court rejected the contention that the vesting of adjudicatory powers in the presiding officer is by itself invalid on the ground of political bias[3].

4. Rule-Making Power

The presiding officer of a House is empowered to make rules to give effect to the provisions of the Tenth Schedule. All such rules must be placed before the House for 30 days. The House may approve or modify or disapprove them. Further, he/she may direct that any willful contravention by any member of such rules may be dealt with in the same manner as a breach of privilege of the House.

According to the rules made so, the presiding officer can take up a defection case only when he/she receives a complaint from a member of the House. Before taking the final decision, he/she must give the member (against whom the complaint has been made) a chance to submit his/her explanation. He/she may also refer the matter to the committee of privileges for inquiry. Hence, defection has no immediate and automatic effect.

EVALUATION OF THE ACT

The Tenth Schedule of the Constitution (which embodies the anti-defection law) is designed to prevent the evil or mischief of political defections motivated by the lure of office or material benefits or other similar considerations. It is intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections. Rajiv Gandhi, the then Prime Minister, described it as the 'first step towards cleaning-up public life'. The then Central law minister stated that the passing of the 52nd Amendment Bill (anti-defection bill) by a unanimous vote by both the Houses of Parliament was 'a proof, if any, of the maturity and stability of Indian democracy'.

Advantages

The following can be cited as the advantages of the anti-defection law:

(a) It provides for greater stability in the body politic by checking the propensity of legislators to change parties.

(b) It facilitates democratic realignment of parties in the legislature by way of merger of parties.

(c) It reduces corruption at the political level as well as non-developmental expenditure incurred on irregular elections.

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[2] *Kihoto Hollohan* vs. *Zachillhu* (1992).

[3] The court observed: 'The Chairman or Speakers hold a pivotal position in the scheme of parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such constitutional functionaries should not be considered unexceptionable'.

(d) It gives, for the first time, a clear-cut constitutional recognition to the existence of political parties.

Criticism

Though the anti-defection law been hailed as a bold step towards cleansing our political life and started as new epoch in the political life of the country, it has revealed may lacunae in its operation and failed to prevent defections in toto. It came to be criticised on the following grounds:

1. It does not make a differentiation between dissent and defection. It curbs the legislator's right to dissent and freedom of conscience. Thus, 'it clearly puts party bossism on a pedestal and sanctions tyranny of the party in the name of the party discipline'[4].
2. Its distinction between individual defection and group defection is irrational. In other words, 'it banned only retail defections and legalised wholesale defections'[5].
3. It does not provide for the expulsion of a legislator from his/her party for his/her activities outside the legislature.
4. Its discrimination between an independent member and a nominated member is illogical. If the former joins a party, he/she is disqualified while the latter is allowed to do the same.
5. Its vesting of decision-making authority in the presiding officer is criticised on two grounds. Firstly, he/she may not exercise this authority in an impartial and objective manner due to political exigencies. Secondly, he/she lacks the legal knowledge and experience to adjudicate upon the cases. In fact, two Speakers of the Lok Sabha (Rabi Ray—1991 and Shivraj Patil—1993) have themselves expressed doubts on their suitability to adjudicate upon the cases related to defections[6].

91ST AMENDMENT ACT (2003)

Reasons

While introducing this amendment bill in the Parliament, the Government of India gave the following reasons for making this amendment to the Constitution of India:

1. Demands have been made from time to time in certain quarters for strengthening and amending the Anti-defection Law as contained in the Tenth Schedule, on the ground that these provisions have not been able to achieve the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defections while declaring individual defections as illegal. The provision for exemption from disqualification in case of splits as provided in the Tenth Schedule has, in particular, come under severe criticism on account of its destabilising effect on the Government.
2. The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the Law Commission of India in its 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of 2002 have, inter alia, recommended omission of the provision of the Tenth Schedule pertaining to exemption from disqualification in case of splits.
3. The NCRWC was also of the view that a defector should be penalised for his/her action by debarring him/her from holding any public office as a minister or any

[4]Soli J. Sorabjee, 'The Remedy should not be worse than the Disease', *The Times of India (Sunday Review)*, February 1, 1985, p. 1.

[5]Madhu Limaye, *Contemporary Indian Politics*, 1989, p. 190.

[6]Speaker Shivraj Patil stated: 'The advantages in giving these cases to the judiciary are many. The Speaker or the Chairman may or may not be endowed with legal acumen and proficiency in law. It is more apt to have the cases decided by the Supreme Court or high court judges'.

other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier.

4. The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and states and this practice had to be prohibited by law and that a ceiling on the number of ministers in a state or the Union Government be fixed at the maximum of 10% of the total strength of the popular House of the Legislature.

Provisions

The 91st Amendment Act of 2003 has made the following provisions to limit the size of Council of Ministers, to debar defectors from holding public offices, and to strengthen the anti-defection law:

1. The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15 per cent of the total strength of the Lok Sabha.
2. A member of either House of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister.
3. The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15 per cent of the total strength of the Legislative Assembly of that state. But, the number of ministers, including the Chief Minister, in a state shall not be less than 12.
4. A member of either House of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister.
5. A member of either House of Parliament or either House of a State Legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to hold any remunerative political post. The expression "remunerative political post" means (i) any office under the Central Government or a state government where the salary or remuneration for such office is paid out of the public revenue of the concerned government; or (ii) any office under a body, whether incorporated or not, which is wholly or partially owned by the Central Government or a state government and the salary or remuneration for such office is paid by such body, except where such salary or remuneration paid is compensatory in nature.
6. The provision of the Tenth Schedule (anti-defection law) pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.

CHAPTER 86 Pressure Groups

MEANING AND TECHNIQUES

The term 'pressure group' was originated in the USA. A pressure group is a group of people who are organised actively for promoting and defending their common interests. It is so called as it attempts to bring a change in the public policy by exerting pressure on the government. It acts as a liaison between the government and its members.

The pressure groups are also called *interest groups* or vested groups. They are different from the political parties in that they neither contest elections nor try to capture political power. They are concerned with specific programmes and issues and their activities are confined to the protection and promotion of the interests of their members by influencing the government.

The pressure groups influence the policy-making and policy-implementation in the government through legal and legitimate methods like lobbying, correspondence, publicity, propagandising, petitioning, public debating, maintaining contacts with their legislators and so forth. However, some times they resort to illegitimate and illegal methods like strikes, violent activities and corruption which damages public interest and administrative integrity.

According to Odegard, pressure groups resort to three different techniques in securing their purposes. First, they can try to place in public office persons who are favourably disposed towards the interests they seek to promote. This technique may be labelled *electioneering*. Second, they can try to persuade public officers, whether they are initially favourably disposed toward them or not, to adopt and enforce the policies that they think will prove most beneficial to their interests. This technique may be labelled *lobbying*. Third, they can try to influence public opinion and thereby gain an indirect influence over the government, since the government in a democracy is substantially affected by public opinion. This technique may be labelled *propagandizing*[1].

PRESSURE GROUPS IN INDIA

A large number of pressure groups exist in India. But, they are not developed to the same extent as in the US or the western countries like Britain, France, Germany and so on. The pressure groups in India can be broadly classified into the following categories:

1. Business Groups

The business groups include a large number of industrial and commercial bodies. They are the most sophisticated, the most powerful and the largest of all pressure groups in India. They include:

(i) Federation of Indian Chamber of Commerce and Industry (FICCI).

(ii) Associated Chamber of Commerce and Industry of India (ASSOCHAM).

[1]G.A. Almond and G.B. Coleman (eds), *The Politics of the Developing Areas,* Princeton, (1970), p. 185.

(iii) Federation of All India Foodgrain Dealers Association (FAIFDA).
(iv) All-India Manufacturers Organisation (AIMO).

2. Trade Unions

The trade unions voice the demands of the industrial workers. They are also known as *labour groups*. A peculiar feature of trade unions in India is that they are associated either directly or indirectly with different political parties. They include:

(i) All-India Trade Union Congress (AITUC)—affiliated to CPI
(ii) Indian National Trade Union Congress (INTUC)—affiliated to the Congress
(iii) Hind Mazdoor Sabha (HMS)—affiliated to the Socialists
(iv) Centre of Indian Trade Unions (CITU)—affiliated to the CPM
(v) Bharatiya Mazdoor Sangh (BMS)—affiliated to the BJP

First Trade Union in India: All India Trade Union Congress (AITUC) was founded in 1920 with Lala Lajpat Rai as its first President. Upto 1945, Congressmen, Socialists and Communists worked in the AITUC which was the central trade union organisation of workers of India. Subsequently, the trade union movement got split on political lines.

3. Agrarian Groups

The agrarian groups represent the farmers and the agricultural labour class. They include:

(i) Bhartiya Kisan Union (in the wheat belt of North India)
(ii) All India Kisan Sabha (the oldest and the largest agrarian group)
(iii) Bhartiya Kisan Sangh (Gujarat)
(iv) Shetkhari Sanghatana (Maharashtra)
(v) All-India Kisan Sammelan
(vi) United Kisan Sabha (controlled by the CPM)

4. Professional Associations

These are associations that raise the concerns and demands of doctors, lawyers, journalists and teachers. Despite various restrictions, these associations pressurise the government by various methods including agitations for the improvement of their service conditions. They include:

(i) Indian Medical Association (IMA)
(ii) Bar Council of India (BCI)
(iii) Indian Federation of Working Journalists (IFWJ)
(iv) All India Federation of University and College Teachers (AIFUCT)

5. Student Organisations

Various unions have been formed to represent the student community. However, these unions, like the trade unions, are also affiliated to various political parties. These are:

(i) Akhil Bharatiya Vidyarthi Parishad (ABVP) (affiliated to BJP)
(ii) All India Students Federation (AISF) (affiliated to CPI)
(iii) National Students Union of India (NSUI) (affiliated to Congress)
(iv) Students Federation of India (SFI) (affiliated to CPM)

6. Religious Organisations

The organisations based on religion have come to play an important role in Indian politics. They represent the narrow communal interest. They include:

(i) Rashtriya Swayamsevak Sangh (RSS)
(ii) Vishwa Hindu Parishad (VHP)
(iii) Jamaat-e-Islami
(iv) All-India Conference of Indian Christians
(v) Shiromani Akali Dal

"The Shiromani Akali Dal should be regarded as more of a religious pressure group rather than a political party in view of the fact that it has been concerned more with the mission of saving the sikh community from being absorbed into the ocean of hindu society than with fighting for the cause of a sikh homeland"[2].

[2]J.C. Johari: *Indian Government and Politics*, Vishal, Thirteenth Edition, p. 591.

7. Caste Groups

Like religion, caste has been an important factor in Indian politics. The competitive politics in many states of the Indian Union is in fact the politics of caste rivalries: Brahmin versus Non-Brahmin in Tamil Nadu and Maharashtra, Rajput versus Jat in Rajasthan, Kamma versus Reddy in Andhra, Ahir versus Jat in Haryana, Baniya Brahmin versus Patidar in Gujarat, Kayastha versus Rajput in Bihar, Nair versus Ezhava in Kerala and Lingayat versus Okkaliga in Karnataka[3]. Some of the caste-based organisations are:

(i) Nadar Caste Association in Tamil Nadu
(ii) Marwari Association
(iii) Harijan Sevak Sangh
(iv) Kshatriya Maha Sabha
(v) Kayastha Sabha

8. Tribal Organisations

The tribal organisations are active in MP, Chattisgarh, Bihar, Jharkhand, West Bengal and the North Eastern States of Assam, Manipur, Nagaland and so on. Their demands range from reforms to that of secession from India and some of them are involved in insurgency activities. The tribal organisations include:

(i) National Socialist Council of Nagaland (NSCN)
(ii) Tribal National Volunteers (TNU) in Tripura
(iii) People's Liberation Army in Manipur
(iv) Tribal Sangh of Assam
(v) United Mizo Freedom Organisation

9. Linguistic Groups

Language has been so important factor in Indian politics that it became the main basis for the reorganisation of states. The language along with caste, religion and tribe have been responsible for the emergence of political parties as well as pressure groups. Some of the linguistic groups are:

(i) Tamil Sangam
(ii) Anjuman Tarraki-i-Urdu
(iii) Andhra Maha Sabha
(iv) Hindi Sahitya Sammelan
(v) Nagari Pracharani Sabha
(vi) Dakshina Bharat Hindi Prachar Sabha

10. Ideology Based Groups

In more recent times, the pressure groups are formed to pursue a particular ideology, i.e., a cause, a principle or a programme. These groups include:

(i) Environmental protection groups like Narmada Bachao Andolan, and Chipko Movement
(ii) Democratic rights organisations
(iii) Civil liberties associations
(iv) Gandhi Peace Foundation
(v) Woman rights organisations

11. Anomic Groups

Almond and Powell observed: "By anomic pressure groups we mean more or less a spontaneous breakthrough into the political system from the society such as riots, demonstrations, assassinations and the like. The Indian Government and bureaucratic elite, overwhelmed by the problem of economic development and scarcity of resources available to them, inevitably acquires a technocratic and anti-political frame of mind, particularistic demands of whatever kinds are denied legitimacy. As a consequence interest groups are alienated from the political system"[4]. Some of the anomic pressure groups are:

(i) Naxalite Groups
(ii) Jammu and Kashmir Liberation Front (JKLF)
(iii) United Liberation Front of Assam (ULFA)
(iv) Dal Khalsa

[3]Paul Kolenda: Caste in India since Independence (in *Social and Economic Development in India* by Basu and Sission, p. 110).

[4]G.A. Almond and G.B. Powell: *Comparative Politics*, 1972, pp. 75–76.

CHAPTER 87 National Integration

India is a land of widespread diversities in terms of religion, language, caste, tribe, race, region and so on. Hence, the achievement of national integration becomes very essential for the all-around development and prosperity of the country.

MEANING

Definitions and statements on national integration:

"National integration implies avoidance of divisive movements that would balkanise the nation and presence of attitudes throughout the society that give preference to national and public interest as distinct from parochial interests"[1] *Myron Weiner.*

"National integration is a socio-psychological and educational process through which a feeling of unity, solidarity and cohesion develops in the hearts of the people and a sense of common citizenship or feeling of loyalty to the nation is fostered among them"[2] *HA Gani.*

"National integration is not a house which could be built by mortar and bricks. It is not an industrial plan too which could be discussed and implemented by experts. Integration, on the contrary, is a thought which must go into the heads of the people. It is the consciousness which must awaken the people at large" *Dr. S. Radhakrishna.*

"National integrations means, and ought to mean, cohesion not fusion, unity but not uniformity, reconciliation but not merger, agglomeration but not assimilation of the discrete segments of the people constituting a political community or state"[3] *Rasheeduddin Khan.*

To sumup, the concept of national integration involves political, economic, social, cultural and psychological dimensions and the inter-relations between them.

OBSTACLES

Among the major obstacles to national integration include:

1. Regionalism

Regionalism refers to sub-nationalism and sub-territorial loyalty. It implies the love for a particular region or state in preference to the country as a whole. There is also sub-regionalism, that is, love for a particular region in preference to the state of which the region forms a part.

Regionalism is "a subsidiary process of political integration in India. It is a manifestation of those residual elements which do not find expression in the national polity and national culture, and being excluded from the centrality of the new polity, express

[1]Myron Weiner: *Politics of Scarcity: Public Pressure and Political Response in India*, 1963.

[2]H.A. Gani: *Muslim Political Issues and National Integration*, p. 3.

[3]Rasheeduddin Khan: National Integration and Communal Harmony (in *National Integration of India*, Volume II, Edited by Sinha).

themselves in political discontent and political exclusionism"[4].

Regionalism is a country-wide phenomenon which manifests itself in the following forms:

(i) Demand of the people of certain states for secession from the Indian Union (like Khalistan, Dravid Nad, Mizos, Nagas and so on).

(ii) Demand of the people of certain areas for separate statehood (like Bodoland, Vidharbha, Gorkhaland and so on).

(iii) Demand of people of certain Union Territories for full-fledged statehood (like Puducherry, Delhi and so on).

(iv) Inter-state boundary disputes (like Chandigarh and Belgaum) and river-water disputes (like Cauvery, Krishna, Ravi-Beas and so on).

(v) 'Sons of the soil theory' which advocates preference to local people in government jobs, private jobs, permits and so on. Their slogan will be Assam for Assamese, Maharashtra for Maharashtrians and so on.

2. Communalism

Communalism means love for one's religious community in preference to the nation and a tendency to promote the communal interest at the cost of the interest of other religious communities. It has its roots in the British rule where the 1909, 1919 and 1935 Acts had introduced communal representation for the Muslims, Sikhs and others.

The communalism got accentuated with the politicisation of religion. Its various manifestations are:

(i) Formation of political parties based on religion (like Akali Dal, Muslim League, Shiv Sena and so on).

(ii) Emergence of pressure groups (non-political entities) based on religion (like RSS, Vishwa Hindu Parishad, Jamaat-e-Islami and so on).

(iii) Communal riots (between Hindus and Muslims, Hindus and Sikhs, Hindus and Christians and so on—Varanasi, Mathura, Hyderabad, Aligarh, Amritsar and some other places are affected by communal violence).

(iv) Dispute over religious structures like temples, mosques and others (The dispute over Ram Janma Bhoomi in Ayodhya where the *kar sevaks* had demolished a disputed structure on December 6, 1992).

The reasons for the persistence of communalism include religious orthodoxy of muslims, the role of Pakistan, Hindu chauvinism, government's inertia, the role of political parties and other groups, electoral compulsions, communal media, socio-economic factors and so on.

3. Casteism

Casteism implies love for one's own caste-group in preference to the general national interest. It is mainly an outcome of the politicisation of caste. Its various manifestations include:

(i) Formation of political parties on the basis of caste (like Justice Party in Madras, Republican Party, Bahujan Samaj Party and so on).

(ii) Emergence of pressure groups (non-political entities) based on caste (like Nadar Association, Harijan Sevak Sangh, Kshatriya Mahasabha and so on).

(iii) Allotment of party tickets during elections and the formation of council of ministers in the states on caste lines.

(iv) Caste conflicts between higher and lower castes or between dominant castes in various states like Bihar, Uttar Pradesh, Madhya Pradesh and so on.

(v) Violent disputes and agitations over the reservation policy.

B.K. Nehru observed: "The communal electorates (of the British days) in a vestigal form still remain in the shape of reservations for the Scheduled Castes and Scheduled Tribes. They serve to emphasise caste origin and

[4]Kousar J. Azam: *Political Aspects of National Integration*, p. 82.

make people conscious of the caste in which they were born. This is not conducive to national integration"[5].

At the state level, the politics is basically a fight between the major caste groups like Kamma versus Reddy in Andhra Pradesh, Lingayat versus Vokaligga in Karnataka, Nayar versus Ezhava in Kerala, Bania versus Patidar in Gujarat, Bhumiar versus Rajput in Bihar, Jat versus Ahir in Haryana, Jat versus Rajput in Uttar Pradesh, Kalita versus Ahom in Assam and so on.

4. Linguism

Linguism means love for one's language and language-speaking people. The phenomena of linguism, like that of regionalism, communalism or casteism, is also a consequence of political process. It has two dimensions: (a) the reorganisation of states on the basis of language; and (b) the determination of the official language of the Union.

The creation of the first linguistic state of Andhra out of the then Madras state in 1953 led to the countrywide demand for the reorganisation of states on the basis of language. Consequently, the states were reorganised on a large-scale in 1956 on the basis of the recommendations made by the States Reorganisation Commission[6] (1953–1955). Even after this, the political map of India underwent a continuous change due to the pressure of popular agitations and the political conditions, which resulted in the bifurcation of existing states like Bombay, Punjab, Assam, and so on.

The enactment of the Official Languages Act (1963) making Hindi as the Official Language of the Union led to the rise of anti-Hindi agitation in South India and West Bengal. Then, the Central government assured that English would continue as an 'associate' official language so long as the non-Hindi speaking states desire it. Moreover, the three-language formula (English, Hindi and a regional language) for school system is still not being implemented in Tamil Nadu[7]. Consequently, Hindi could not emerge as the *lingua franca* of the composite culture of India as desired by the framers of the Constitution.

The problem of linguism got accentuated with the rise of some regional parties like the TDP, AGP, Shiv Sena and so on.

NATIONAL INTEGRATION COUNCIL

In 1961, the central government convened the National Integration Conference to find ways and means to combat the evils of communalism, casteism, regionalism, linguism and narrow-mindedness and to formulate definite conclusions in order to give a lead to the country. This conference decided to set-up a National Integration Council (NIC) to review all matters pertaining to national integration and to make recommendations thereon. Accordingly, the NIC was constituted in 1961 and held its first meeting in 1962.

The NIC consists of Prime Minister as Chairman, Union Ministers, Leaders of the Opposition in the Lok Sabha and the Rajya Sabha, the Chief Ministers of all states and union territories with Legislatures. It also includes leaders of national and regional political parties, chairpersons of national commissions, eminent journalists, public figures, and representatives of business and women's organisations.

The meetings of the NIC are convened as per requirement from time to time. There is no regular or specified time interval for convening meeting of the NIC. So far,

[5]B.K. Nehru: The Indira Gandhi Memorial Lectures delivered at the University of Kerala in January, 1988.

[6]It was a three-member commission headed by Fazl Ali. Its other two members were K.M. Panikkar and H.N. Kunzru.

[7]Tamil Nadu Government opposed the three language formula and continued to teach only two languages, that is, English and Tamil in the educational institutions of the state.

16 meetings of the NIC have been held since its inception.

The 16th meeting of the NIC was held on 23-09-2013. A Resolution was passed in the meeting to condemn violence, take all measures to strengthen harmonious relationship between all communities, to resolve differences and disputes among the people within the framework of law, to condemn atrocities on Scheduled Castes and Scheduled Tribes, to condemn sexual abuse and ensure that all women enjoy the fruits of freedom to pursue their social and economic development with equal opportunities, and to safeguard their right of movement in the public space at any time of the day or night.

NATIONAL FOUNDATION FOR COMMUNAL HARMONY

The National Foundation for Communal Harmony (NFCH) was set up in 1992. It is an autonomous body under the administrative control of the Union Home Ministry. It promotes communal harmony, fraternity and national integration.

The activities undertaken by the NFCH are mentioned below:[8]

1. To provide financial assistance to the child victims of societal violence for their care, education and training, aimed at their effective rehabilitation
2. To promote communal harmony and national integration by organising variety of activities either independently or in association with educational institutions, NGOs & other organisations
3. To conduct studies and grant scholarships to institutions/scholars for conducting studies
4. To confer awards for outstanding contribution to communal harmony and national integration
5. To involve Central/state governments /UT Administrations, industrial/commercial organisations, NGOs and others in promoting the objectives of the Foundation
6. To provide information services, publish monographs and books, etc. on the subject

[8]This information is obtained from the official website of the National Foundation for Communal Harmony, Government of India.

CHAPTER 88 Foreign Policy

The foreign policy of India regulates India's relations with other states of the world in promoting its national interests. It is determined by a number of factors, viz., geography, history and tradition, social structure, political organisation, international milieu[1], economic position, military strength, public opinion and leadership.

PRINCIPLES

The various principles (or features) of Indian foreign policy are explained below:

1. Promotion of World Peace

India's foreign policy aims at the promotion of international peace and security. Article 51 of the Constitution (Directive Principles of State Policy) directs the Indian State to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations, and encourage settlement of international disputes by arbitration. Besides peace is necessary to promote the economic development of nations.

2. Anti-Colonialism

The foreign policy of India opposes colonialism and imperialism. India views that the colonialism and imperialism leads to exploitation of the weaker nations by the imperialist powers and affects the promotion of international peace. India advocated the liquidation of colonialism in all forms and supported the liberation movement in Afro-Asian countries like Indonesia, Malaya, Tunisia, Algeria, Ghana, Namibia and so on. Thus, India expressed her solidarity with the people of Afro-Asian nations in their struggle against colonial and imperialist forces like Britain, France, Holland, Portugal and so on. The present neo-colonialism and neo-imperialism is also opposed by India.

3. Anti-Racialism

Opposition to racialism in all its forms is an important aspect of Indian foreign policy. According to India, racialism (i.e., discrimination between people on the basis of race), like colonialism and imperialism, leads to exploitation of the blacks by the whites, social inequity and hinders the promotion of world peace. India strongly criticised the policy of apartheid (racial discrimination) being followed by the white minority racist regime of South Africa. It even snapped diplomatic relations with South Africa in 1954 as a protest against the policy of apartheid[2]. Similarly, India played an important role in the liberation of Zimbabwe (earlier Rhodesia) and Namibia from the white domination.

[1]It includes world political climate, world public opinion and world organisations.

[2]India again re-established full diplomatic relations with South Africa in 1994 when the policy of racial discrimination was finally given up and democratic government under Nelson Mandela came into existence.

4. Non-Alignment

When India became independent in 1947, the world was divided into two blocs on ideological basis, namely, the capitalist bloc headed by USA and the communist bloc headed by the former USSR. In such a situation of 'cold war', India refused to join any of these two blocs and adopted a policy of non-alignment. In this context, Jawaharlal Nehru observed: "We propose to keep away from the power politics of groups, aligned against one another, which have led in the past to world wars and which may again lead to disasters on an even vaster scale. I feel that India can play a big part, and perhaps an effective part, in helping to avoid war. Therefore, it becomes all the more necessary that India should not be lined up with any group of power which for various reasons are full of fear of war and prepare for war".

"When we say that India follows a policy of non-alignment, it means (i) that India has no military alliances with countries of either bloc or indeed with any nation; (ii) India has an independent approach to foreign policy; and (iii) India attempts to maintain friendly relations with all countries"[3].

5. Panchsheel

Panchsheel implies the five principles of conduct in international relations. It was embodied in the Preamble of the Indo-China Treaty on Tibet, signed in 1954 by Jawaharlal Nehru and Chou-En-Lai, the Chinese Premier. The five principles were:

(i) mutual respect for each other's territorial integrity and sovereignty;
(ii) non-aggression;
(iii) non-interference in each other's internal affairs;
(iv) equality and mutual benefit; and
(v) peaceful co-existence.

Panchsheel became very popular and many countries of the world like Burma, Yugoslavia, Indonesia and so on adopted it. Panchsheel and non-alignment are the greatest contributions of India to the theory and practice of international relations.

6. Afro-Asian Bias

Even though the foreign policy of India stands for maintaining friendly relations with all the countries of the world, it has always exhibited a special bias towards the Afro-Asian nations. It aims at promoting unity among them and tries to secure for them a voice and an influence in the international bodies. India has been seeking international assistance for the economic development of these countries. In 1947, India called the first Asian Relations Conference in New Delhi. In 1949, India brought together the Asian countries on the burning issue of Indonesian freedom. India played an active role in the Afro-Asian Conference at Bandung (Indonesia) in 1955. India also played an important role in the formation of Group of 77 (1964), Group of 15 (1990), Indian Ocean Rim Association (1997), BIMSTEC (1997), and SAARC (1985). India earned the name of 'Big Brother' from many of the neighbouring countries.

7. Links with Commonwealth

In 1949 itself, India declared the continuation of her full membership of the Commonwealth of the Nations and the acceptance of the British Crown as the head of the Commonwealth. But, this extra-constitutional declaration does not affect India's sovereignty in any manner as the Commonwealth is a voluntary association of independent nations. It also does not affect India's republican character as India neither pays final allegiance to the British Crown nor the latter has any functions to discharge in relation to India.

India remained a member of the Commonwealth because of pragmatic reasons. It thought that the membership in the Commonwealth would be beneficial to her in the economic, political, cultural and other spheres. It has been playing an important role at the CHOGM (Commonwealth Heads

[3] A.S. Narang: *Indian Government and Politics*, Gitanjali, 2000 Edition, p. 602.

of Government Meeting), also known as the Commonwealth Summit. India hosted the CHOGM at New Delhi in 1983.

8. Support to the UNO

India became a member of the UNO in 1945 itself. Since then, it has been supporting the activities and programmes of UNO. It has expressed full faith in the objectives and principles of UNO. Some of the facets of India's role in UNO are:

(i) It is through the UNO that India embarked on the policy of fighting against the colonialism, imperialism and racialism, and now neo-colonialism, neo-imperialism and terrorism.

(ii) In 1953, Vijay Lakshmi Pandit of India was elected as the President of the UN General Assembly.

(iii) India actively participated in the UN Peace-keeping missions in Korea, Congo, El Salvador, Combodia, Angola, Somalia, Mozambique, Sierra Leone, Yugoslavia and so on.

(iv) India continued to participate actively in the open ended working groups of the UNO. India was the Co-chairman of the working group on the strengthening of the UN which submitted its report in 1997.

(v) Several times, India has been a non-permanent member of the UN Security Council. Now, India is demanding a permanent seat in the Security Council.

9. Disarmament

The foreign policy of India is opposed to arms race and advocates disarmament, both conventional and nuclear. This is aimed at promoting world peace and security by reducing or ending tensions between power blocs and to accelerate economic development of the country by preventing the unproductive expenditure on the manufacture of arms. India has been using the UNO platform to check the arms race and to achieve disarmament. India took the initiative of holding a six-nation summit at New Delhi in 1985 and made concrete proposals for nuclear disarmament.

By not signing the Nuclear Non-proliferation Treaty (NPT) of 1968 and the Comprehensive Test Ban Treaty (CTBT) of 1996, India has kept its nuclear options open. India opposes NPT and CTBT due to their discriminatory and hegemonistic nature. They perpetuate an international system in which only five nations (USA, Russia, China, UK and France) can legitimately posses nuclear weapons.

GUJRAL DOCTRINE

The Gujral Doctrine is a milestone in India's foreign policy. It was propounded and initiated in 1996 by I.K. Gujral, the then Foreign Minister in the Deve Gowda Government.

The doctrine advocates that India, being the biggest country in South Asia, should extend unilateral concessions to the smaller neighbours. In other words, the doctrine is formulated on India's accommodating approach towards its smaller neighbours on the basis of the principle of non-reciprocity. It recognises the supreme importance of friendly and cordial relations with India's neighbours.

The doctrine is a five-point roadmap to guide the conduct of India's foreign relations with its immediate neighbours. These five principles are as follows:

1. With the neighbours like Bangladesh, Bhutan, Maldives, Nepal and Sri Lanka, India should not ask for reciprocity, but give to them what it can in good faith.
2. No South Asian country should allow its territory to be used against the interest of another country of the region.
3. No country should interfere in the internal affairs of another country.
4. All South Asian countries should respect each other's territorial integrity and sovereignty.
5. All South Asian countries should settle all their disputes through peaceful bilateral negotiations.

Gujral himself explained: "The logic behind the Gujral Doctrine was that since we had to

face two hostile neighbours in the north and the west, we had to be at 'total peace' with all other immediate neighbours in order to contain Pakistan's and China's influence in the region."

NUCLEAR DOCTRINE OF INDIA

India's nuclear doctrine can be summarised as follows:[4]

1. Building and maintaining a credible minimum deterrent.
2. A posture of "No First Use" – nuclear weapons will only be used in retaliation against a nuclear attack on Indian territory or on Indian forces anywhere.
3. Nuclear retaliation to a first strike will be massive and designed to inflict unacceptable damage.
4. Nuclear retaliatory attacks can only be authorised by the civilian political leadership through the Nuclear Command Authority.
5. Non-use of nuclear weapons against non-nuclear weapon states.
6. However, in the event of a major attack against India, or Indian forces anywhere, by biological or chemical weapons, India will retain the option of retaliating with nuclear weapons.
7. A continuance of strict controls on export of nuclear and missile related materials and technologies, participation in the Fissile Material Cutoff Treaty negotiations, and continued observance of the moratorium on nuclear tests.
8. Continued commitment to the goal of a nuclear-weapon-free world, through global, verifiable and non-discriminatory nuclear disarmament.

The Nuclear Command Authority comprises a Political Council and an Executive Council. The Political Council is chaired by the Prime Minister. It is the sole body which can authorise the use of nuclear weapons.

[4]Press Information Bureau, Government of India, January 4, 2003.

The Executive Council is chaired by the National Security Advisor. It provides inputs for decision making by the Nuclear Command Authority and executes the directives given to it by the Political Council.

CONNECT CENTRAL ASIA POLICY OF INDIA

India launched the "Connect Central Asia" Policy in 2012. This policy is aimed at strengthening and expanding of India's relations with the Central Asian countries. These countries include Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

India's "Connect Central Asia" policy is a broad-based approach including political, security, economic and cultural connections. Its features (or elements) are as follows[5]:

1. India will continue to build on its strong political relations through the exchange of high level visits.
2. India will strengthen its strategic and security cooperation. The focus will be on military training, joint research and counter-terrorism coordination.
3. India will step up multilateral engagement with Central Asian partners using the synergy of joint efforts through existing fora like the SCO, Eurasian Economic Community (EEC) and the Custom Union.
4. India looks to Central Asia as a long-term partner in energy, and natural resources.
5. The medical field is another area that offers huge potential for cooperation.
6. India's higher education system delivers at a fraction of the fees charged by Western universities. Keeping this in mind, India would like to assist in the setting up of a Central Asian University in Bishkek.
7. India is working on setting up a Central Asian e-network with its hub in India, to

[5]Based on Keynote address delivered by Minister of State for External Affairs, E. Ahamed, at the first India–Central Asia Dialogue, June 12, 2012 at Bishkek, Kyrgyzstan.

deliver, tele-education and tele-medicine connectivity, linking all the five Central Asian States.

8. Indian companies can showcase India's capability in the construction sector and build world class structures at competitive rates.
9. As for land connectivity, India has reactivated the International North-South Transport Corridor (INSTC).
10. Absence of a viable banking infrastructure in the region is a major barrier to trade and investment. Indian banks can expand their presence if they see a favourable policy environment.
11. India and Central Asian nations will jointly work to improve air connectivity between them.
12. Connections between the people are the most vital linkages to sustain the deep engagement. India and Central Asian nations will encourage regular exchanges of scholars, academics, civil society and youth delegations to gain deeper insights into each other's cultures.

India's "Connect Central Asia" policy is consonant with its overall policy of deepening engagement in Eurasia, its policy of strengthening relations with China, with Pakistan, and building on its traditional relationship with Russia. India hopes that its membership in numerous regional forums including at the SCO, would bolster India's renewed linkages with the region.

ACT EAST POLICY OF INDIA

In 2014, the Modi Government upgraded India's "Look East Policy" and re-named it as the "Act East Policy". The "Look East Policy" was first initiated in 1992 by the then Prime Minister P.V. Narasimha Rao.

The features (or elements) of India's "Act East Policy" are as follows[6]:

1. India's Act East Policy focusses on the extended neighbourhood in the Asia-Pacific region. The policy which was originally conceived as an economic initiative, has gained political, strategic and cultural dimensions including establishment of institutional mechanisms for dialogue and cooperation.
2. Act East Policy has placed emphasis on India-ASEAN cooperation in our domestic agenda on infrastructure, manufacturing, trade, skills, urban renewal, smart cities, Make in India and other initiatives.
3. The objective of "Act East Policy" is to promote economic cooperation, cultural ties and develop strategic relationship with countries in the Asia-Pacific region through continuous engagement at bilateral, regional and multilateral levels.
4. The North East of India has been a priority in our Act East Policy. The policy provides an interface between North East India including the state of Arunachal Pradesh and the ASEAN region.
5. On the Civilizational front, Buddhist and Hindu links are being energized to develop new contacts and connectivity between people.
6. On Connectivity, special efforts are being made to develop a coherent strategy, particularly for linking ASEAN with North East India.
7. India's economic engagement with ASEAN has been stepped up. The ASEAN-India Agreement on Trade in Service and Investments has entered into force for India and seven ASEAN countries from 1 July 2015.
8. On strategic issues, India has increased convergence on security interests with key partners both in bilateral and multilateral format. Closer cooperation in combating terrorism, collaborating for peace and stability in the region and promotion of maritime security based on international norms and laws are being pursued.

[6]Press Information Bureau, Government of India, December 23, 2015.

PART XI Working of the Constitution

In this Part...

CHAPTER 89 National Commission to Review the Working of the Constitution

The National Commission to Review the Working of the Constitution (NCRWC) was set up by a resolution of the Government of India in 2000. It was an 11-member Commission headed by M.N. Venkatachaliah, the former Chief Justice of India[1]. It submitted its report in 2002.

TERMS OF REFERENCE

According to the terms of reference, the commission was required to examine, in the light of the experience of the past fifty years, as to how far the existing provisions of the Constitution are capable of responding to the needs of efficient, smooth and effective system of governance and socio-economic development of modern India and to recommend changes, if any. The terms of reference clearly specified that the commission should recommend changes that are required to be made in the Constitution within the framework of parliamentary democracy and without interfering with the 'basic structure' or 'basic features' of the Constitution.

The commission clarified that its task was to review the working of the Constitution and not to rewrite it and its function was only recommendatory and advisory in nature. It was left to the Parliament to accept or reject any of the recommendations.

The commission had no agenda before it. On its own, it identified the eleven areas of study and proposed to examine them. They included the following[2]:

1. Strengthening the institutions of parliamentary democracy (working of the Legislature, the Executive and the Judiciary; their accountability; problems of administrative, social and economic cost of political instability; exploring the possibilities of stability within the discipline of parliamentary democracy).

[1]The other members of the Commission were: B.P. Jeevan Reddy (Chairman of the Law Commission), R.S. Sarkaria (former judge of the Supreme Court), K. Punnayya (former judge of the Andhra Pradesh High Court), Soli Sorabjee (Attorney-General of India), K. Parasaran (former Attorney-General of India), Subhash Kashyap (former Secretary-General of Lok Sabha), C.R. Irani (Chief Editor and MD of the Statesman), Abid Hussain (former Ambassador of India to the USA), Smt. Sumitra Kulkarni (former MP) and P.A. Sangma (former Speaker of the Lok Sabha). P.A. Sangma resigned three months before the submission of the report by the Commission.

[2]Report of the Commission, Volume I, Chapter 1.

2. Electoral reforms; standards in political life.
3. Pace of socio-economic change and development under the Constitution (assurance of social and economic rights: how fair? how fast? how equal?).
4. Promoting literacy; generating employment; ensuring social security; alleviation of poverty.
5. Union-State relations.
6. Decentralization and devolution; empowerment and strengthening of Panchayati Raj Institutions.
7. Enlargement of Fundamental Rights.
8. Effectuation of Fundamental Duties.
9. Effectuation of Directive Principles and achievement of the Preambular objectives of the Constitution.
10. Legal control of fiscal and monetary policies; public audit mechanism.
11. Administrative system and standards in public life.

AREAS OF CONCERN

The following are the important areas of concern according to the perception of the Commission[3]:

1. There is a fundamental breach of the constitutional faith on the part of Governments and their method of governance lies in the neglect of the people who are the ultimate source of all political authority. Public servants and institutions are not alive to the basic imperative that they are servants of the people meant to serve them. The dignity of the individual enshrined in the Constitution has remained an unredeemed pledge. There is, thus, a loss of faith in the Governments and governance. Citizens see their Governments besieged by uncontrollable events and are losing faith in institutions. Society is unable to cope up with current events.
2. The foremost area of concern is the present nature of the Indian State and its inability to anticipate and provide for the great global forces of change ushered in by the pace of scientific and technological developments.
3. The next and equally important dimension is the increasing cost of government and fiscal deficits which are alarming.
4. There is a pervasive impurity of the political climate and of political activity. Criminalisation of politics, political-corruption and the politician-criminal-bureaucratic nexus have reached unprecedented levels of needing strong systemic changes.
5. Issues of national integrity and security have not received adequate and thoughtful attention. Mechanisms for the assessment of early warning symptoms of social unrest are absent. Mechanisms for adequate and immediate state responses to emergencies and disaster management are wholly inadequate. Administration, as a system for anticipating coming events and planning responses in advance, has failed. It has become un-coordinated and directionless amalgam of different departments often with over-lapping and even mutually conflicting jurisdictions, powers and responsibilities which merely acts as a reaction to problems. There are no clear-cut standards or basis for fixing responsibilities.
6. Though India's overall record and experience as a working democracy (despite many centrifugal forces) are worthy to mention and though the bases of democratic debate have widened with the 73rd and 74th Constitutional amendments, the working of the institutions of parliamentary democracy, however, have thrown-up serious fault-lines, which might, if unattended, prove destructive of the basic democratic values.
7. There is pervasive misuse of the electoral process and the electoral system is unable to prevent the entry of persons with criminal record into the portal of law-making institutions.
8. The Parliament and the State Legislatures, owing to the inherent weakness of the

[3]Report of the Commission, Volume I, Chapter 2.

electoral system, have failed to acquire adequate representative character.

9. The increasing instability of the elected governments is attributable to opportunistic politics and unprincipled defections. The economic and administrative costs of political instability are unaffordably high and their impact on the polity is not clearly comprehended and realized. Though just four Prime Ministers ruled the country for 40 years out of the 54 years of independence and one political party alone was in power for 45 years, however, 1989 onwards the country saw five General Elections to the Lok Sabha. Costs of this political instability are simply colossal.
10. The state of the Indian economy is disturbing. The economy is gradually sinking into a debt-trap. Economic, fiscal and monetary policies, coupled with administrative inefficiency, corruption and wasteful expenditure are increasingly pushing the society into extra-legal systems, crime-syndicates, mob-rule and hoodlum out-fits. Black-money, parallel economy and even parallel governments are the overarching economic and social realities. Legitimate governments will, in due course, find it increasingly difficult to confront them. In course of time these illegal criminal out-fits will dictate terms to the legitimate governments.
11. Rural de-population, urbanization, urban-congestion and social unrest need immediate attention and solutions. Increasing unemployment will prove a serious threat to orderly government.
12. Future of society is increasingly knowledge-based and knowledge-driven. The quality of education and the higher research need urgent repair. The country is engaged in a unilateral and unthinking educational disarmament.
13. System of administration of justice in the country is another area of concern.
14. Criminal justice system is on the verge of collapse. The quality of investigations and prosecutions requires a strong second look. Law's delay and costs of litigation have become proverbial. Victimology, victim-protection and protection of witnesses in sensitive criminal-trials need institutional arrangements. Recruitment, training, refresher and continuing legal education for lawyers, judges and judicial administrators need immediate attention. The increasing utilization of alternative dispute resolution mechanisms such as mediation, conciliation and arbitration as well as mechanisms of auxiliary adjudicative services need to be stressed.
15. Communal and other inter-group riots in a country like India with its religious, social and cultural diversity cannot be treated as merely law and order problem. They are manifestations of collective behavioural disorders. Legal and administrative measures are required to be taken to remove the insecurity felt by the minorities and for bringing them into the mainstream of the national fabric.
16. The state of social infrastructure is disturbing. There are 380 million children below the age of 14. The arrangements for their education, health and well-being are wholly inadequate both qualitatively and quantitatively. 96.4 per cent of the primary education budget goes for salaries alone.
17. Rates of infant mortality, blindness, maternal mortality, maternal-anemia, child malnutrition and child-immunization, despite significant progress achieved, yet remain at high and disconcerting levels.
18. Public health and hygiene have not received adequate attention. There is an alarming increase in infectious diseases such as Tuberculosis, Malaria, Hepatitis, HIV etc.

RECOMMENDATIONS

In all, the commission made 249 recommendations. Of them, 58 recommendations involve amendments to the Constitution, 86 involve legislative measures and the remaining 105 recommendations could be accomplished through executive action.

The various recommendations of the commission are mentioned below in an area-wise manner[4]:

1. On Fundamental Rights

1. The scope of prohibition against discrimination (under Articles 15 and 16) should be extended to include 'ethnic or social origin, political or other opinion, property or birth'.
2. The freedom of speech and expression (under Article 19) should be expanded to include explicitly 'the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas'.
3. The following should be added as new Fundamental Rights:
   (a) Right against torture, cruelty and inhuman treatment or punishment.
   (b) Right to compensation if a person is illegally deprived of his/her right to life or liberty.
   (c) Right to leave and to return to India.
   (d) Right to privacy and family life.
   (e) Right to rural wage employment for a minimum of 80 days in a year.
   (f) Right to access to courts and tribunals and speedy justice.
   (g) Right to equal justice and free legal aid[5].
   (h) Right to care and assistance and protection (in case of children).
   (i) Right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development.
4. The right to education (under Article 21-A) should be enlarged to read as: 'Every child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of the SCs and STs until they complete the age of eighteen years'.
5. Two changes should be made with respect to preventive detention (under Article 22), namely, (i) the maximum period of preventive detention should be six months; and (ii) the advisory board should consist of a chairman and two other members and they should be serving judges of any high court.
6. Sikhism, Jainism and Buddhism should be treated as religions separate from Hinduism and the provisions grouping them together (under Article 25) should be deleted. At present, the word 'Hindu' is defined to include these religions also.
7. The protection from judicial review afforded by Article 31-B to the Acts and Regulations specified in the Ninth Schedule should be restricted to only those which relate to (i) agrarian reforms, (ii) reservations, and (iii) the implementation of Directive Principles specified in clause (b) or (c) of Article 39.
8. No suspension of the enforcement of the Fundamental Rights under Articles 17, 23, 24, 25 and 32 in addition to those under Articles 20 and 21 during the operation of a national emergency (under Article 352).

2. On Right to Property

Article 300-A should be recast as follows:

1. Deprivation or acquisition of property shall be by authority of law and only for a public purpose.
2. There shall be no arbitrary deprivation or acquisition of property.
3. No deprivation or acquisition of agricultural, forest and non-urban homestead land belonging to or customarily used by the SCs and STs shall take place except by authority of law which provides for suitable rehabilitation scheme before taking possession of such land. In brief, a right to 'suitable rehabilitation' for the SCs and STs if their land is to be acquired.

[4]Chapters 3 to 10 in Volume I of the Report of the Commission contains the detailed area-wise recommendations. The summary of recommendations is given in Chapter 11 of the Report.

[5]At present, it is a Directive Principle under Article 39-A.

3. On Directive Principles

1. The heading of Part-IV of the Constitution should be amended to read as 'Directive Principles of State Policy and Action'.
2. A new Directive Principle on control of population should be added.
3. An independent National Education Commission should be set-up every five years.
4. An Inter-Faith Commission should be established to promote inter-religious harmony and social solidarity.
5. There must be a body of high status to review the level of implementation of the Directive Principles.
6. A strategic Plan of Action should be initiated to create a large number of employment opportunities in five years.
7. Implementation of the recommendations contained in the Report of the National Statistical Commission (2001).

4. On Fundamental Duties

1. Consideration should be given to the ways and means by which Fundamental Duties could be popularized and made effective.
2. The recommendations of the Justice Verma Committee on operationalisation of Fundamental Duties should be implemented at the earliest[6].
3. The following new fundamental duties should be included in Article 51-A:
   (a) Duty to vote at elections, actively participate in the democratic process of governance and to pay taxes.
   (b) To foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children.
   (c) Duty of industrial organizations to provide education to children of their employees.

5. On Parliament and State Legislatures

1. The privileges of legislators should be defined and delimited for the free and independent functioning of Parliament and state legislatures.
2. Article 105 may be amended to clarify that the immunity enjoyed by members under parliamentary privileges does not cover corrupt acts committed by them in connection with their duties in the House or otherwise. Further, no court would take cognizance of any offence arising out of a member's action in the House without prior sanction of the Speaker/Chairman. Article 194 may also be similarly amended in relation to the members of state legislatures.
3. The domiciliary requirement for eligibility to contest elections to Rajya Sabha from the concerned state should be maintained. This is essential to ensure the federal character of the Rajya Sabha.
4. The MP local area development scheme should be discontinued.
5. The Election Commission should be empowered to identify and declare the various offices under the central and state governments to be 'offices of profit' for the purposes of being chosen, and for being, a member of the appropriate legislature.
6. Immediate steps be taken to set up a Nodal Standing Committee on National Economy.
7. A Standing Constitution Committee of the two Houses of Parliament for a priori scrutiny of constitutional amendment proposals should be set up.
8. A new Legislation Committee of Parliament to oversee and coordinate legislative planning should be constituted.

[6]The Government of India appointed the committee "to operationalise the suggestions to teach Fundamental Duties to the citizens of India" in the year 1998 under the chairmanship of Justice J.S. Verma. The Committee submitted its report in October 1999.

9. The existing Parliamentary Committees on Estimates, Public Undertakings and Subordinate Legislation may not be continued.
10. The Parliamentarians must voluntarily place themselves open to public scrutiny through a parliamentary ombudsman.
11. The State Legislatures with less than 70 members should meet for at least 50 days in a year and other State Legislatures for at least 90 days. Similarly, the minimum number of days for sittings of Rajya Sabha and Lok Sabha should be fixed at 100 and 120 days respectively.
12. A Study Group outside Parliament for study of procedural reforms should be set up.

6. On Executive and Administration

1. In case of hung Parliament, the Lok Sabha may elect the leader of the House. He/she may then be appointed as the prime minister by the President. The same procedure could be followed at the state level also.
2. A motion of no-confidence against a prime minister must be accompanied by a proposal of alternative leader to be voted simultaneously. This is called as the 'system of constructive vote of no confidence'.
3. For a motion of no-confidence to be brought out against the government, at least 20 per cent of the total number of members of the House should give notice.
4. The practice of having oversized Council of Ministers should be prohibited by law. A ceiling on the number of Ministers in any State or the Union government be fixed at the maximum of 10 per cent of the total strength of the popular house of the legislature.
5. The practice of creating a number of political offices with the position, perks and privileges of a minister should be discouraged. Their number should be limited to 2 per cent of the total strength of the lower house.
6. The Constitution should provide for appointment of Lokpal keeping the prime minister outside its purview and the institution of lokayuktas in the states.
7. Lateral entry into government jobs above joint secretary level should be allowed.
8. Article 311 should be amended to ensure not only protection to the honest public servants but penalisation to dishonest ones.
9. The questions of personnel policy including placements, promotions, transfers and fast-track advancements should be managed by autonomous Civil Service Boards constituted under statutory provisions.
10. Officials, before starting their career, in addition to the taking of an oath of loyalty to the Constitution, should swear to abide by the principles of good governance.
11. Right to information should be guaranteed and the traditional insistence on secrecy should be discarded. In fact, there should be an oath of transparency in place of an oath of secrecy.
12. Public Interest Disclosure Acts (which are popularly called the Whistle-blower Acts) may be enacted to fight corruption and mal-administration.
13. A law should be enacted to provide for forfeiture of benami property of corrupt public servants as well as non-public servants.

7. On Centre-State and Inter-State Relations

1. The Inter-State Council Order of 1990 may clearly specify the matters that should form the parts of consultations.
2. Management of disasters and emergencies (both natural and manmade) should be included in the List III (Concurrent List) of the Seventh Schedule.
3. A statutory body called the Inter-State Trade and Commerce Commission should be established.

4. The President should appoint the governor of a state only after consultation with the chief minister of that state.
5. Article 356 should not be deleted, but it must be used sparingly and only as a remedy of the last resort.
6. The question whether the ministry in a state has lost the confidence of the assembly or not should be tested only on the floor of the House. The Governor should not be allowed to dismiss the ministry, so long as it enjoys the confidence of the House.
7. Even without the state being under a proclamation of emergency, President's Rule may be continued if elections cannot be held. Article 356 should be amended to this effect.
8. The State Assembly should not be dissolved before the proclamation issued under Article 356 has been laid before Parliament. Article 356 should be amended to ensure this.
9. River water disputes between States and/or the Centre should be heard and disposed by a bench of not less than three judges and if necessary, a bench of five judges of the Supreme Court for the final disposal of the suit.
10. Parliament should replace the River Boards Act of 1956 with another comprehensive enactment after consultation with all the states.
11. When the state bill is reserved for consideration of the President, there should be a time-limit (say three months) within which the President should take a decision whether to give his/her assent or to return the bill.

8. On Judiciary

1. A National Judicial Commission under the Constitution should be established to recommend the appointment of judges of the Supreme Court. It should comprise the chief justice of India (as chairman), two senior most Judges of the Supreme Court, the Union law minister and one person nominated by the President.
2. A committee of the National Judicial Commission should examine complaints of deviant behaviour of the Supreme Court and high court judges.
3. The retirement age of the judges of high courts and Supreme Court should be increased to 65 and 68 respectively.
4. No court other than the Supreme Court and the High Courts should have the power to punish for contempt of itself.
5. Except for the Supreme Court and the High Courts, no other court should have the power to declare the Acts of Parliament and State Legislatures as being unconstitutional or beyond legislative competence and so ultra-vires.
6. A National Judicial Council and Judicial Councils in States should be set up for the preparation of plans and annual budget proposals.
7. In the Supreme Court and the High Courts, judgements should ordinarily be delivered within 90 days from the conclusion of the case.
8. An award of exemplary costs should be given in appropriate cases of abuse of process of law.
9. Each High Court should prepare a strategic plan for time-bound clearance of arrears in courts within its jurisdiction. No case to remain pending for more than one year.
10. The system of plea-bargaining should be introduced as part of the process of decriminalization.
11. The hierarchy of the subordinate courts in the country should be brought down to a two-tier subordinate judiciary under the High Court.

9. On Pace of Socio-Economic Change and Development

1. A way could and should be found to bring a reasonable number of SCs, STs and BCs on to the benches of the Supreme Court and high courts.

2. Social policy should aim at enabling the SCs, STs and BCs and with particular attention to the girls to compete on equal terms with the general category.
3. Appropriate new institutions should be established to ensure that the resources earmarked for the weaker sections are optimally used.
4. The Citizens' Charters be prepared by every service providing department/ agency to enumerate the entitlements of the citizens specifically those of the SCs, STs and other deprived classes.
5. Reservation for SCs, STs and BCs should be brought under a statute covering all aspects of reservation including setting up of Arakshan Nyaya Adalats to adjudicate upon all disputes pertaining to reservation.
6. Residential schools for SCs, STs and BCs should be established in every district in the country.
7. All tribal areas governed by the Fifth Schedule of the Constitution should be transferred to the Sixth Schedule. Other tribal areas should also be brought under the Sixth Schedule.
8. Special courts exclusively to try offences under the SCs and STs (Prevention of Atrocities) Act, 1989, should be established.
9. Prevention of untouchability requires, inter alia, effective punitive action under the Protection of Civil Rights Act, 1955.
10. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, should be strictly enforced.
11. Steps should be taken for improvement of educational standards as well as for increasing the political representation of the minority communities.
12. A fully empowered National Authority for the Liberation and Rehabilitation of bonded labour should be set up. Similar authorities should also be established at the state level.
13. As regards women, actions covering reservations, development, empowerment, health and protection against violence should be taken.

10. On Decentralisation (Panchayats and Municipalities)

1. The Eleventh and Twelfth Schedules of the Constitution should be restructured in a manner that creates a separate fiscal domain for panchayats and municipalities.
2. State panchayat council should be established under the chairmanship of the chief minister.
3. Panchayats and Municipalities should be categorically declared to be 'institutions of self-government' and exclusive functions be assigned to them. For this purpose, Articles 243-G and 243-W should be suitably amended.
4. The Election Commission of India should have the power to issue directions to the State Election Commission for the discharge of its functions. The State Election Commission should submit its annual or special reports to the Election Commission of India and to the Governor. This requires the amendment of Articles 243-K and 243-ZA.
5. Article 243-E should be amended to the effect that a reasonable opportunity of being heard shall be given to a Panchayat before it is dissolved.
6. To ensure uniformity in the practice relating to audit of accounts, the CAG of India should be empowered to conduct the audit or lay down accounting standards for Panchayats.
7. Whenever a Municipality is superseded, a report stating the grounds for such dissolution should be placed before the State Legislature.
8. All provisions regarding qualifications and disqualifications for elections to local authorities should be consolidated in a single law.
9. The functions of delimitation, reservation and rotation of seats should be vested in

a Delimitation Commission and not in the State Election Commission.

10. The concept of a distinct and separate tax domain for municipalities should be recognized.

11. On Institutions in North East India

1. Efforts are to be made to give all the States in this region the opportunities provided under the 73rd and 74th Constitutional Amendments. However, this should be done with due regard to the unique political traditions of the region.
2. The subjects given under the Sixth Schedule and those mentioned in the Eleventh Schedule could be entrusted to the Autonomous District Councils (ADCs).
3. Traditional forms of governance should be associated with self-governance because of the present dissatisfaction.
4. A National Immigration Council should be set up to examine a range of issues including a review of the Citizenship Act, the Illegal Migrants Determination by Tribunal Act, the Foreigners Act and so on.

12. On Electoral Processes

1. Any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified from being chosen as or for being a member of Parliament or Legislature of a State.
2. Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc., should be permanently debarred from contesting for any political office.
3. Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed of speedily, if necessary, by appointing Special Courts.
4. The election petitions should also be decided by special courts. In the alternative, special election benches may be constituted in the High Courts and earmarked exclusively for the disposal of election petitions and election disputes.
5. Any system of State funding of elections bears a close nexus to the regulation of working of political parties by law and to the creation of a foolproof mechanism under law with a view to implementing the financial limits strictly. Therefore, proposals for State funding should be deferred till these regulatory mechanisms are firmly in position.
6. Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.
7. The election code of conduct should be given the sanctity of law and its violation should attract penal action.
8. The Commission while recognizing the beneficial potential of the system of run off contest electing the representative winning on the basis of 50 per cent plus one vote polled, as against the present first-past-the-post system, for a more representative democracy, recommends that the Government and the Election Commission of India should examine this issue of prescribing a minimum of 50 per cent plus one vote for election in all its aspects.
9. An independent candidate who loses election three times consecutively should be permanently debarred from contesting election to the same office.
10. The minimum number of valid votes polled should be increased to 25 per cent from the current 16.67 per cent as a condition for the deposit not being forfeited.
11. The issue of eligibility of non-Indian born citizens or those whose parents or grandparents were citizens of India to hold high offices in the realm such as President, Vice-President, Prime Minister and Chief Justice of India should be examined in depth through a political process after a national dialogue[7].

[7]The Commission was deeply divided on this issue and because of this, P.A. Sangma left the Commission.

12. The Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. Similar procedure should be adopted in the case of appointment of State Election Commissioners.

13. On Political Parties

1. A comprehensive law regulating the registration and functioning of political parties or alliances of parties should be made. The proposed law should–
   (a) provide that political party or alliance should keep its doors open to all citizens irrespective of any distinctions of caste, community or the like.
   (b) make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way.
   (c) make it compulsory for the political parties requiring their candidates to declare their assets and liabilities at the time of filing their nomination.
   (d) provide that no political party should provide ticket to a candidate if he/she was convicted by any court for any criminal offence or if the courts have framed criminal charges against him/her.
   (e) specifically provide that if any party violates the above provision, the candidate involved should be liable to be disqualified and the party deregistered and derecognized.
2. The Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller political parties is discouraged.
3. A comprehensive legislation providing for regulation of contributions to the political parties and towards election expenses should be enacted by consolidating such laws. This new law should:
   (a) aim at bringing transparency into political funding;
   (b) permit corporate donations within higher prescribed limits;
   (c) make donations up to a specified limit tax exempt;
   (d) make both donors and donees of political funds accountable;
   (e) provide that audited political party accounts should be published yearly; and
   (f) provide for de-recognition of the party and enforcement of penalties for filing false election returns.

14. On Anti-Defection Law

The provisions of the Tenth Schedule of the Constitution should be amended to provide the following:

1. All persons defecting (whether individually or in groups) from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections.
2. The defectors should be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until the next elections whichever is earlier.
3. The vote cast by a defector to topple a government should be treated as invalid.
4. The power to decide questions regarding disqualification on ground of defection should vest in the Election Commission instead of in the Speaker/Chairman of the House concerned.